

THE STATE OF NEW HAMPSHIRE

MERRIMACK, S.S.

SUPERIOR COURT

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

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.

Court Monitor: Lin Powers

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1 (Call to Order of the Court at 1:04 p.m.)

2 THE COURT: Good afternoon. Okay. Is this telephone  
3 on, and who's on the phone?

4 MR. LEE: Gary Lee, Your Honor.

5 THE COURT: Oh, okay. Hi. And do you want to  
6 participate or are you just listening?

7 MR. LEE: I may participate, if that's all right with  
8 you, Your Honor.

9 THE COURT: Okay, fine. Okay. Now, as I understand  
10 it, what we're here for today is ACE's Motion for  
11 Reconsideration, and to determine a discovery schedule. Also  
12 ACE has filed a couple of Motions, Discovery Motions, just  
13 yesterday, so the Liquidator has not had a chance to respond,  
14 although I would like to try to address those issues and get  
15 them resolved today, so you don't all have to come back, okay?

16 So why don't we hear first on ACE's Motion for  
17 Reconsideration.

18 MR. TOL: Your Honor, Pieter Van Tol for the ACE  
19 Companies. We actually put in a request that Your Honor may  
20 not have seen, which is two-fold. One for the - -

21 THE COURT: Let me just, Mr. Tol, can you hear this?

22 MR. TOL: That's me, Your Honor.

23 THE COURT: I mean, Mr. Lee, can you hear Mr. Tol?

1 MR. LEE: Not yet, Your Honor.

2 THE COURT: Okay, not yet.

3 MR. LEE: I can hear that.

4 THE COURT: Okay. Well, can you come up and speak  
5 closer to the phone, I guess?

6 MR. TOL: What, what I was saying, Your Honor, is you  
7 may not be aware but we filed papers either this morning or  
8 yesterday, asking the Court for permission to have an  
9 evidentiary hearing on the Motion for Reconsideration, and to  
10 put in reply papers.

11 And the basis for that is there seems to be a very big  
12 discrepancy between the Liquidators version of what happened in  
13 connection with the proposed amendment, and our version. So  
14 rather than having that discussed today, we thought it would be  
15 fruitful to put in additional evidence in the form of  
16 affidavits, and if the Court deems it advisable to have a very  
17 brief evidentiary hearing on that matter.

18 THE COURT: Well, I guess I have, after having read  
19 the pleadings, and I did see those pleadings, I did read those  
20 today. I don't see how what happened at the Legislature, or  
21 what didn't happen at the Legislature, or before the, the - -

22 THE CLERK: NAIC.

23 THE COURT: Yes. How that's at all relevant. I

1 mean, had it passed, it would have no bearing, bearing on it,  
2 or, you know, that could be, it doesn't matter why they didn't  
3 pass it or - -

4 MR. TOL: Well, the key point, Your Honor, that  
5 shouldn't get lost is that, let me make two points. The first  
6 is we do have additional evidence, to the extent Your Honor is  
7 inclined against the Motion, we would like to put in that  
8 evidence so we can make our record, if, in fact, we appeal it.  
9 So let me just say that first.

10 THE COURT: Okay.

11 MR. TOL: But secondly, the key thing, I don't want  
12 this to get lost, is the fact that the Liquidator in supporting  
13 the proposed amendment said this will clarify the intent of the  
14 Legislature. That was a major selling point of theirs. Here's  
15 your chance to tell the Supreme Court what you really meant  
16 when you passed this statute. It's telling that the  
17 Legislature declined to take up that opportunity and said,  
18 implicitly, no, that's not what we meant. If they had meant  
19 it, they would have passed the proposed amendment, or at least  
20 forwarded it onto the full Senate floor. So - -

21 THE COURT: I guess I don't agree that it's implicit  
22 and I just don't see the relevance, one way or the other. I  
23 mean, had they passed it and the Liquidator came in and said,

1 see, they clarified what they meant before, I would give that  
2 more weight, either.

3 MR. TOL: Well, Your Honor, then at minimum, we would  
4 like the opportunity to put in an additional brief, and we  
5 understand the Court's inclination will keep it as targeted as  
6 we can. And by that, when I say additional brief, I mean  
7 affidavits, that will form any decision, and if the Court deems  
8 it necessary, even an evidentiary hearing, whatever Your Honor  
9 decides, so that we do have a complete record should we want to  
10 appeal it.

11 THE COURT: Sure, that's, that's fine. I just don't  
12 see how it's relevant one way or the other. So we're going to  
13 leave that, then, that you're going to submit affidavits in  
14 support of your Motion and I will rule on the affidavits, is  
15 that how you want to do it?

16 MR. TOL: Your Honor, at the Court's pleasure, we  
17 will do that as soon as you like and, and make any further  
18 applications that you would like.

19 THE COURT: Okay. And we'll give the Liquidator a  
20 chance to respond. Do you want to add anything at this time,  
21 Mr. Leslie?

22 MR. LESLIE: No, Your Honor. We consider both points  
23 that, that ACE has based its consideration on is irrelevant and

1 won't submit anything else.

2 THE COURT: Okay. Now, as far as discovery, did,  
3 what, what is the, the, where are we with these AFIA Cedents as  
4 far as giving over discovery? Does the Liquidator have the  
5 documents that ACE Company is looking, the ACE Companies are  
6 seeking?

7 MR. LESLIE: Your Honor, it might be helpful to  
8 briefly discuss, to answer your question directly, we believe  
9 we have produced to ACE every communication that the Liquidator  
10 or the joint provisional Liquidators have had any AFIA Cedent.

11 THE COURT: Mr. Lee, can you hear that?

12 MR. LEE: I'm afraid not, Your Honor.

13 MR. LESLIE: Thank you for this opportunity, Gary.

14 MR. LEE: My pleasure.

15 MR. LESLIE: I know. The Liquidator has provided to  
16 ACE all communications that the Liquidator has had with any of  
17 the AFIA Cedents and as part of our production, we also  
18 collected documents from the joint provisional Liquidators and  
19 we produced those documents as well. So at the present time,  
20 ACE has all communications, written communications between the  
21 Liquidator and, and the AFIA Cedents, any of the AFIA Cedents.

22 It's our position that those are the only communications  
23 that really matter on the fairness, necessity and

1 reasonableness questions. But we have already produced those  
2 documents. ACE looks for different documents, documents  
3 between AFIA Cedents, one to the other, that may not have been  
4 shared with the Liquidator, and they, they seek other things  
5 from the AFIA Cedents, but I, Your Honor, I would like to just,  
6 if I may, provide you with a brief synopsis how the Liquidator  
7 sees the status of discovery, notwithstanding the tone of  
8 yesterday's filing by ACE, we have felt that the communications  
9 with ACE and its counsel have been very reasonable and  
10 professional since October when we received the production, the  
11 interrogatories and the production requests, and we have felt  
12 that we'd worked efficiently with ACE to move the discovery to  
13 the point that it's at right now.

14 As to the Liquidator, it's our impression that the, that  
15 the only issue of dispute is a question of the scope of  
16 privilege we've asserted in withholding documents. We've  
17 provided detailed privilege logs and we recognize that ACE  
18 disagrees with us on our view of what documents ought to be  
19 withheld based on privilege. We will be responding to ACE's  
20 latest inquiries in that regard next week and within the next  
21 week, ACE will be in a position to, and Benjamin Moore, to make  
22 a decision on whether they want to file Motions to Compel.

23 So we feel that, the Liquidator piece of the discovery has

1 moved along to a point where the issues are now ripe and ready  
2 to be determined by the Court.

3 THE COURT: Okay. Are you saying that some of the  
4 documents between the Liquidator and AFIA Cedents are  
5 privileged?

6 MR. LESLIE: No, Your Honor.

7 THE COURT: No. Okay.

8 MR. LESLIE: Of course not.

9 THE COURT: None of those.

10 MR. LESLIE: None. The, the, the ACE's document  
11 production requests of the Liquidator were fairly broad, and  
12 inquire as to communications that would include communications  
13 between the Liquidator and myself, for example. The, the  
14 negotiation of this settlement necessarily involved extensive  
15 involvement of lawyers. So while we may have produced one box  
16 of documents to ACE, that's the end result of a tremendous  
17 amount of work, reviewing documents at the New Hampshire  
18 Insurance Department, reviewing documents within the custody of  
19 the Special Deputy, reviewing documents at Home Insurance,  
20 reviewing the documents of the joint provisional Liquidators.

21 Then e-mails, backups for e-mails for all of those as  
22 well, and then producing the documents which were non-  
23 privileged and then providing detailed privileged logs. We



1 recognize and respect the fact that ACE disagrees with us about  
2 our view of, of privilege and, and what we've withheld. But  
3 these are the type of generic discovery disputes that this  
4 Court is expert at dealing with and we believe the issues are  
5 ripe to be resolved, and we agree with ACE on its proposed  
6 schedule date of April 15 for resolving discovery issues.

7 THE COURT: Okay. I guess, then, what I would like  
8 to explore them while you're both here, and not, not the  
9 privileged, what you're claiming as privileged, but documents  
10 that you need from AFIA Cedents since the Liquidator is giving  
11 you everything that it, he has. I don't know what authority I  
12 have to order an AFIA Cedent to give over other documents.

13 MR. TOL: Well, Your Honor, it, it's important to  
14 remember there are three categories of documents that we're  
15 seeking. One, Mr. Leslie spoke about which is the Liquidator's  
16 documents and we will be having briefing over that privilege,  
17 and I'll move past that one.

18 But there are two different types of AFIA Cedents. The  
19 first group are Equitas and Agriphina. Those are two AFIA  
20 Cedents that submitted affidavits in this Court and that act  
21 alone, Your Honor, submits them to the jurisdiction of the  
22 Court. So you cannot be an Affiant who says to the Court,  
23 here's what I think but I'm not going to answer any more

1 questions. I'm not going to produce any documents irrelevant  
2 to my affidavit. That in and of itself gives Your Honor the  
3 power.

4 In addition to that, both Equitas and Agriphina have filed  
5 proofs of claims in this Court. There's abundant case law  
6 we'll make available to the Court saying that when you do so,  
7 you're in for a penny, in for a pound.

8 The third category, Your Honor, is the other AFIA Cedents.  
9 We are seeking discovery from them because we know that at  
10 least one of those Cedents, Nationwide, is of the opinion that  
11 the scheme that the Liquidator's putting through is actually a  
12 settlement of a claim. We think there could be similar  
13 documents like this.

14 I grant you that we got this from the Liquidator's  
15 production, but you'll notice that I put those AFIA Cedents in  
16 the third tier. We are really focusing our efforts on the  
17 Liquidator and then on the Equitas and Agriphina Cedents. If  
18 it turns out that this is, that we feel we're getting the  
19 documents we can get from categories one and two, then the  
20 other AFIA Cedents become less important in, in nature. We  
21 don't want to waive the right to seek discovery from them, but  
22 they have, too, have put themselves before the Court by filing  
23 proof of claims.

1 THE COURT: Okay. I, you've, the Motion to Compel  
2 that you filed is for production of documents by Equitas?

3 MR. TOL: Yes, Your Honor.

4 THE COURT: I guess we, and Equitas was served, I  
5 take it.

6 MR. TOL: Equitas is served and then - -

7 THE COURT: So I guess maybe we need to wait and see  
8 if they, if Equitas responds.

9 MR. LESLIE: Your Honor, have there been Motions to  
10 Compel filed?

11 THE COURT: You need to come up here.

12 MR. LESLIE: Have Motions to Compel been filed?

13 MR. TOL: Against Equitas, yes. You were served with  
14 that yesterday.

15 MR. LESLIE: We were served with it yesterday?

16 MR. SNOW: You have a copy of it.

17 MR. LESLIE: We haven't seen it yet.

18 THE COURT: Oh, okay.

19 MR. LESLIE: Your Honor, we have not - -

20 THE COURT: All right.

21 MR. SMITH: We checked our e-mail this morning at  
22 7:00 a.m. We haven't seen it.

23 MR. TOL: We served it yesterday, courtesy copy this

1 morning, Your Honor. It's not, it hasn't, it's not before the  
2 Court.

3 THE COURT: No, I know it's not before the Court. I  
4 was hoping that we might be able to resolve some issues today,  
5 but I, I'm, I can see by the nature of the issues and all that  
6 that's not going to be possible. So I guess we're going to  
7 have to just wait for this to, for responses.

8 MR. TOL: I think that's the case, Your Honor, and  
9 just to fill out the last picture on Equitas. Equitas has  
10 taken the position that one, our request is overbroad but it is  
11 exactly tailored to the allegation in Mr. Williams' affidavit,  
12 so we disagree with that.

13 Secondly, they've taken some very broad privilege stances  
14 such as common interest privilege. So that's what will be  
15 before the Court. So Your Honor is right, it is for another  
16 day.

17 THE COURT: All right. I was hoping that we might be  
18 able to resolve something, but that's not going to be possible.  
19 I guess the other thing we, we could agree on, discovery  
20 schedule? Or is that not possible, either?

21 MR. TOL: Well, Your Honor, again with approach, I  
22 think we're actually not that far apart, if you look at what's  
23 been proposed. We have proposed a discovery schedule, first of

1 all, we are in agreement that April 15th will be the cut-off  
2 for getting all written discovery done and hopefully any issues  
3 resolved.

4       What we had proposed is then a two-month period to take  
5 depositions in this case. We're not asking yet for all  
6 depositions of all nine AFIA Cedents. We reserve the right to  
7 do so, but really, we're going to try to focus this in on the  
8 six, seven, eight people who really know what's going on, Mr.  
9 Williams, Mr. Warren from Agriphina, things of that nature. So  
10 we're only really talking about a two-month period for  
11 discovery. We then propose that the Court have an evidentiary  
12 hearing some time in July.

13       What the Liquidator has proposed is that they make an  
14 offer of proof through affidavits on May 1 and have a hearing  
15 on May 15, with the witnesses present, and we would have the  
16 right to cross-examine them. As an initial matter, we're not  
17 available on May 30th, and I think local counsel's probably out  
18 the first two weeks in June, so you can see the, on the date  
19 issue, we're not that far apart.

20       And we're even not that far apart on how the hearing  
21 should proceed. If the Liquidator would like to go forward  
22 with an offer of proof, we think that's fine and, in fact, what  
23 we would suggest is that the offers of proof be frontloaded to

1 the beginning of the process. So that everyone who's going to  
2 testify at the hearing puts in an offer of proof, then we have  
3 depositions and by doing so, we will winnow down, focus the  
4 issues for the Court, and then we have the evidentiary hearing,  
5 so the Court doesn't have to listen to us - -

6 THE COURT: Okay. You're proposing an offer of proof  
7 - -

8 MR. TOL: Do cross-examination.

9 THE COURT: You're proposing an offer of proof  
10 hearing before the Court?

11 MR. TOL: Yes, Your Honor. In advance of that,  
12 affidavits. What the Liquidator has suggested doing is offers  
13 of proof through, through affidavits before the hearing. Then  
14 at the hearing, the witnesses will be cross-examined. And we  
15 are fine with that approach, but what we're suggesting is we do  
16 that at the beginning of the process - -

17 THE COURT: Why does that need to be - -

18 MR. TOL: Before depositions.

19 THE COURT: Before the Court, then, if you're going  
20 to later present evidence?

21 MR. TOL: I'm sorry, Your Honor, why does - -

22 THE COURT: I, I'm frankly not, I'm not familiar with  
23 such a procedure where, and I'm not clear I'm understanding

1 what you're proposing. Are you proposing that both sides will  
2 come in, give the Court offers of proof - -

3 MR. TOL: Through affidavit.

4 THE COURT: And then there's, then there's a recess  
5 of a couple of months?

6 MR. TOL: No, Your Honor, the way, the way the  
7 Liquidator is proposed is the following, offers of proof will  
8 be submitted by affidavit two weeks before the hearing. This  
9 is his proposal.

10 THE COURT: Right.

11 MR. TOL: Then the witnesses will be made available  
12 at the hearing for cross-examination. This is similar to the  
13 British style where you put in your evidence first, and then  
14 what happens at the hearing is cross-examination. So, and it's  
15 actually under a New Hampshire Administrative Rule 15, which  
16 sets forth this process, where the witnesses must be available  
17 in the courtroom on the day to be cross-examined, based on  
18 their affidavits.

19 And what I'm saying is we don't oppose that approach in  
20 general, but we think a better way to do it is rather than  
21 having two weeks between the affidavit and the hearing, we have  
22 two months so we can depose them, so Your Honor doesn't have to  
23 listen to overly long cross-examination.

1           MR. LESLIE: Your Honor, could I, this idea is not a  
2 concept that we generated from virgin earth. The Supreme Court  
3 in its remand order said, on remand, the trial court may  
4 resolve these issues through offers of proof, unless it  
5 determines that a full evidentiary hearing is necessary. We  
6 also want to avoid a European summer tour of depositions. The  
7 Court is mindful of the expense of these proceedings and before  
8 going forth with, I hear three European, three UK based, one  
9 German based, deponent here, before we do that, we advocate  
10 that we move forward with an offer of proof.

11           The offer or proof will be a detailed statement of the  
12 Liquidator's case, essentially our case in chief, on why the  
13 settlement agreement is necessary, fair and reasonable. The  
14 very questions that are before the Court. We believe that  
15 offer of proof, which is the New Hampshire forum, under admin,  
16 under Superior Court Administrative Order 15, would provide, we  
17 will cross-reference and attach to that offer of proof,  
18 affidavits and any relevant documents. Submit to the Court,  
19 submit to ACE, submit to Benjamin Moore, and at that point, we  
20 would suggest that the Court hold a hearing to determine what  
21 the next best step is.

22           We don't believe depositions are necessary. We believe  
23 the most efficient way to deal with this is to, as the rule, as



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 white

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.

1 THE COURT: Right.

2 MR. LESLIE: If the Court, if the trial Court feels  
3 that such an evidentiary hearing is necessary, the Supreme  
4 Court said nothing about discovery.

5 THE COURT: Well, you know what? The, as far as  
6 that, that goes, the Supreme Court sent this back two times and  
7 I'm not going to, I'm just, the last time we all agreed that  
8 there was enough evidence to decide the legal issues, and they  
9 continued to decline to do that. So we're going to go forward  
10 with an evidentiary hearing.

11 So, but I think your proposal is good as far as you  
12 providing an offer of proof. When, under your, when would you  
13 propose to have that ready?

14 MR. LESLIE: We propose to make the offer of proof on  
15 May 1st.

16 THE COURT: All right, May 1.

17 MR. LESLIE: So April 15 is the date for completion  
18 of document production, motions, etc., which we've agreed with.  
19 I believe that Benjamin Moore has agreed to that as well.

20 MR. BOUFFARD: Yeah, we agree to that, Your Honor.  
21 I'm just, note for the record, that we've got some discovery  
22 issues as between Benjamin Moore and the Liquidator as well  
23 that I'm hopeful we can resolve. Our requests were

1 considerably more limited than, than the ACE requests, but  
2 there were still a number of objections raised which I'm  
3 hopeful we can resolve.

4 THE COURT: Okay.

5 MR. BOUFFARD: And, and I would think that April 15th  
6 would give us sufficient time to resolve.

7 THE COURT: All right. April 15th for the document  
8 production. May 1st for the Liquidator's offer of proof. Then  
9 after that, there'll be some discovery. Hopefully, you'll  
10 limit it. Now, the witnesses who are coming, are they, are any  
11 coming from England?

12 MR. LESLIE: If we're able to convince Mr. Williams,  
13 and if we are able to convince Mr. Warren to come, they, and  
14 the joint provisional Liquidator, Gareth Hughes, will come, so  
15 - -

16 THE COURT: Well, I guess, I guess what I'm wondering  
17 was, does it make sense to depose them one week and have the  
18 hearing the next, so they come one time, or are you going to -  
19 -

20 MR. TOL: That makes a lot of sense.

21 MR. SNOW: Then there may be logistical problems,  
22 Your Honor. I'm not resisting that in terms of getting the  
23 transcripts back and having them verified by the witnesses,

1 but that, that's - -

2 MR. LEE: Your Honor, I think that, if I understood  
3 what the Equitas solicitor said, that the Equitas has indicated  
4 through its counsel, are willing to have, that we would depose  
5 Mr. Williams, you know, the testimony is going to be part of  
6 the record of the hearing. You know, given we accept that, the  
7 guy could be deposed. We should be able to work within a  
8 couple of months period so we can take their depositions in, in  
9 London or wherever is more convenient for them.

10 THE COURT: Okay.

11 MR. TOL: We do have offices in London, Your Honor,  
12 and we'd be happy to make those available.

13 THE COURT: Okay. All right. Well, why don't we  
14 then schedule the hearing and you can work out when the  
15 depositions are going to be. You want it in July? Oh, how  
16 many days is this going to be?

17 MR. LESLIE: Your Honor, could we address how many  
18 depositions and who? I mean, how many depositions are we  
19 talking about?

20 MR. TOL: Well, Your Honor, we're not trying to be  
21 cagey, but some of this is we're still waiting for quite a few  
22 documents, but as I said earlier, we're looking at about a half  
23 dozen people, and they would be the obvious ones.

1 THE COURT: Well, I guess you'll have to wait to see  
2 what shakes out in discovery and what's contained in the offer  
3 of proof.

4 MR. LESLIE: We will, we will endeavor to make those  
5 available as soon as possible, and they will be driven by who  
6 puts in offers of proof.

7 MR. TOL: Your Honor, we made our production. ACE  
8 has had a, Benjamin Moore has had a - -

9 THE COURT: I'm not going there today. When, how  
10 many days, about, do you estimate the hearing will be?

11 MR. TOL: I have to confer with Mr. Leslie on that,  
12 so would you - -

13 MR. LESLIE: One.

14 MR. TOL: I, I would think realistically we would  
15 need more than one, Your Honor, because we do have witnesses  
16 coming from overseas. I think we should block a couple of  
17 days, three at a minimum.

18 THE COURT: Three?

19 MR. TOL: Yeah.

20 THE COURT: And do you want to do this in July?

21 MR. LESLIE: Yes, Your Honor, as soon as possible,  
22 Your Honor.

23 MR. TOL: We were thinking mid-July, Your Honor.

1 THE CLERK: Mid-July we're still doing jury trials,  
2 so the end of July, the week of the 25th of July.

3 THE COURT: July 25th?

4 MR. LESLIE: That's fine with us, Your Honor.

5 MR. TOL: If we can't do it sooner, Your Honor.

6 THE COURT: Okay, no ifs, ands or buts, then, okay?  
7 I mean, it's going forward on July 25th. We're blocking out  
8 the time and everybody can count on it.

9 MR. LEE: Your Honor, which dates are you blocking  
10 out?

11 MR. LESLIE: July 25th, Gary.

12 MR. LEE: Okay. And how many days?

13 THE COURT: Three.

14 MR. LESLIE: Three days.

15 MR. LEE: Okay. Thank you.

16 MR. TOL: When, when would ACE advise us of who it  
17 wishes to depose?

18 THE COURT: Well, look it, given that, now this is,  
19 why don't we have another, I'd like to just as soon schedule  
20 another hearing now, after May 1, so that we can make sure. I  
21 just want to make sure that this hearing stays on track.

22 MR. LEE: Your Honor, I think you may want to  
23 schedule a hearing before that date to reserve discovery - -

1 THE COURT: Well - -

2 MR. LESLIE: Yes.

3 THE COURT: How about the week of the 16th of May?  
4 The week of May 16th is available, if you want to do something  
5 that week.

6 THE COURT: All right. How about May 16th, we'll  
7 call it a status conference.

8 MR. TOL: Okay. Thank you, Your Honor.

9 THE COURT: Okay, May 16. It's a Monday. Or do you  
10 want it later in the week?

11 MR. LESLIE: That's fine with us, Your Honor.

12 THE COURT: Okay, May 16th will be a status  
13 conference. That'll be two weeks after the offer of proof so  
14 that - -

15 MR. TOL: What time, Your Honor?

16 THE COURT: Oh, I don't know, what time, Bill? Nine?

17 THE CLERK: Ten.

18 THE COURT: One?

19 THE CLERK: Ten or one.

20 THE COURT: Ten.

21 MR. LESLIE: Ten.

22 THE COURT: Okay, ten o'clock.

23 MR. LESLIE: And, Your Honor, it might be premature



1 to schedule anything on the privilege issues, because I, I  
2 suppose we're hopeful we can work those out with the  
3 Liquidators.

4 THE COURT: Yeah.

5 MR. LESLIE: So - -

6 THE COURT: Yeah, we'll let you - -

7 MR. LESLIE: We haven't filed our motion yet.

8 THE COURT: Yeah.

9 MR. LESLIE: But we'll work on it.

10 THE COURT: Okay. And wait and see what position  
11 Equitas takes.

12 MR. LESLIE: Yes.

13 THE COURT: All right. So are we all done? We've  
14 still got the Liquidator's Motion about compensation, but that  
15 we'll take up separately and later.

16 MR. LESLIE: Nothing further from the ACE Companies,  
17 Your Honor. I don't know if Benjamin Moore has anything  
18 further.

19 MR. BOUFFARD: We have nothing further.

20 THE COURT: Okay. All set, then? All right. I'll  
21 put out an, do I have to include any other dates now besides  
22 April 15th for document production, May 1 for the offer of  
23 proof, May 16th for the status conference and July 25 - -

1 THE CLERK: July 25.

2 THE COURT: For the hearing.

3 MR. LEE: Your Honor, I actually need a return date  
4 for the motions relating to discovery.

5 THE COURT: Right. We may have to add a hearing date  
6 on that, but that's it. All right. So - -

7 THE CLERK: Do you want to do a pretrial? Do you  
8 want that? It could be part of the trial.

9 THE COURT: No, well, I'll decide that on - -

10 THE CLERK: In May?

11 THE COURT: On the May 16th, yeah. Now, who's going  
12 to be the lead in the Liquidator's Motion for Approval, just  
13 the Liquidator and Mr. Leslie, Mr. Benglesdord? ACE doesn't  
14 care about that.

15 MR. TOL: No, Your Honor.

16 THE COURT: No. Okay. Then we'll do that in  
17 chambers then. Okay.

18 (Court concludes at 1:31 p.m.)

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1 I, Mary Mielke, a court approved transcriptionist, do  
2 hereby certify that the foregoing is a correct transcript from  
3 the official electronic sound recording of the proceedings in  
4 the above-entitled matter, to the best of my professional  
5 skills and abilities.

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