

**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**

**ACE COMPANIES' REPLY IN FURTHER SUPPORT OF MOTION  
IN LIMINE ON PRECLUDING EVIDENCE POST-AGREEMENT**

This should be the most noncontroversial and uncomplicated motion that the Court will be asked to consider during its involvement in the dispute between Home and the ACE Companies. Simply put:

1. Any evidence offered by the Liquidator regarding communications after February 11, 2004 is irrelevant to the fairness and reasonableness of the Proposed Agreement. Indeed, how could it be relevant, given that by that date the Proposed Agreement had been executed and the Liquidator had sought its approval from this Court?

2. In fact, the Liquidator has consistently agreed with that position, having objected generally to every single document request served by the ACE Companies to the extent that it asked for post-February 11, 2004 communications, claiming that any such document is "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. The ACE Companies absolutely and completely relied upon the Liquidator's objections, and agreed to the February 11, 2004 cut-off date. What could be more telling and unfair than the Liquidator's refusal to live up to the very bargain he struck?

4. Notwithstanding the Liquidator's characterization, the ACE Companies are not seeking "a general ruling barring the introduction of all evidence after February 11, 2004." Rather, the ACE Companies merely seek the limitation already agreed upon by the Liquidator -- that the Liquidator will not offer evidence of post-February 11, 2004 communications among Home representatives, with the ACE Companies, or with any AFIA Cedent to establish that the Proposed Agreement was fair and reasonable.

5. The Liquidator has not articulated how post-February 11, 2004 communications would be relevant to the fairness and reasonableness of the Proposed Agreement -- having said repeatedly that they are not, it would be hard to explain. The Liquidator claims that he does not anticipate offering "much if any" such evidence -- the reality is that there should be none.

6. However, if the Court deemed post-February 11, 2004 evidence to be relevant, such evidence should be excluded under Rule of Evidence 403. Because the agreement between the ACE Companies and the Liquidator has prevented the ACE Companies from conducting discovery regarding post-February 11, 2004 communications, the admission of such evidence at the hearing would be extremely prejudicial to the ACE Companies. Indeed, in light of the Liquidator's consistent refusal to produce such evidence during discovery, the admission of such evidence would almost certainly constitute an unsustainable exercise of discretion. Such extreme prejudice to the ACE Companies plainly outweighs the evidence's probative value.

7. In conclusion, the ACE Companies believe that it would be wholly inappropriate to allow the Liquidator to rely upon post-February 11, 2004 internal communications, communications with the ACE Companies, or communications with any AFIA Cedent. Such evidence simply cannot be relevant, and to leave this dispute to the hearing would be utterly

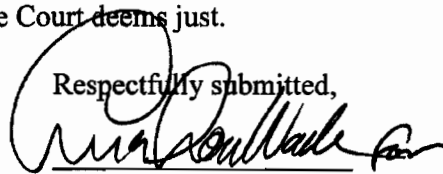
discovery enumerated above, extracted an agreement from the ACE Companies that such discovery was not required, and now wants the Court to approve his renegeing on that agreement.

WHEREFORE, the ACE Companies respectfully request that the Court enter an order:

A. Precluding the Liquidator from offering evidence of communications among Home representatives, with the ACE Companies or with any AFIA Cedent which post-dates the February 11, 2004 execution of the Proposed Agreement on the basis that it is not relevant to the fairness and reasonableness of the Proposed Agreement; and

B. Granting such further relief as the Court deems just.

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing pleading has been served on Roger A. Sevigny, Commissioner of Insurance, Peter Bengelsdorf, Special Deputy, and the following counsel via First Class mail on July 22, 2005:

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A handwritten signature in black ink, appearing to read "Lisa Snow Wade", written over a horizontal line.

Lisa Snow Wade