

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

LIQUIDATOR'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 objects to the 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.

4. All documents concerning the Agreement.

Response: The Liquidator will produce responsive documents.

5. All documents relating to your communications with respect to the Agreement, including but not limited to, any communication you had with the AFIA Cedents regarding the Agreement.

Response: The Liquidator will produce responsive documents.

6. All documents concerning the allegation in paragraph 7 of the Motion that "certain of the AFIA Cedents have been exploring alternative means of realizing recovery with respect to the business protected by the AFIA Treaties, including possible circumvention of Home by entering into side arrangements with ACE Group."

Response: The Liquidator will produce responsive documents.

7. All documents concerning the allegation in paragraph 7 of the Motion that "[c]ertain AFIA Cedents have also questioned the application of the New Hampshire claims and distribution procedures to claims and assets located in the United Kingdom."

Response: The Liquidator will produce responsive documents.

8. All documents concerning your allegation that certain AFIA Cedents had suggested that "UK assets arguably should be 'walled off' from United States creditors and distributed to Home UK Branch creditors" (Motion at 17) (sic - ¶ 7), including, but not limited to:

(a) any "presentations" or other documents regarding the "walling off" approach referred to in paragraph 7 of the Motion; and

(b) any other communications between the AFIA Cedents and any person or entity, including the Liquidator and the Joint Provisional Liquidators, regarding the "walling off" approach.

Response: The Liquidator will produce responsive documents.

9. All documents concerning the settlement negotiations between the Joint Provisional Liquidators and the Informal Creditors' Committee that are referred to in paragraphs 8 and 9 of the Motion.

Response: The Liquidator will produce responsive documents.

10. All documents concerning the decision of "one of the members of the Committee" to abstain from the Agreement, as described in paragraph 9 of the Motion, including, but not limited to, all documents relating to any communications between the member of the Committee and any person or entity, including the Liquidator and/or Joint Provisional Liquidators, regarding the decision to abstain from entering into the Agreement.

Response: The Liquidator will produce responsive documents.

11. All documents concerning any discussions with any of the ACE Companies regarding the Agreement prior to the filing of the Motion.

Response: The Liquidator reasonably construes this interrogatory to refer to discussions with the ACE Companies regarding the Agreement once it was agreed with the AFIA Cedents (and not pre-Agreement discussions with ACE that led the Liquidator to contemplate the Agreement). The Liquidator 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. Notwithstanding this objection, the Liquidator will produce responsive documents.

12. All documents concerning the UK scheme of arrangement referred to in paragraphs 12 through 17 of the Motion, including, but not limited to, all documents concerning any communications between any of the AFIA Cedents and any person or entity, including the Liquidator and/or Joint Provisional Liquidators, relating to the UK scheme of arrangement.

Response: The Liquidator will produce responsive documents. Notwithstanding General Objection 3, the Liquidator notes that the ACE Companies have previously been provided with the Joint Provisional Liquidator's application to the High Court of Justice for an order approving the convening of a scheme creditors' meeting, which included the scheme of arrangement.

13. All documents concerning Sections 1.2, 1.9.1, and 1.9.7 of the Agreement, including, but not limited to, any analysis and supporting documentation for the distribution percentages of proceeds and net recoveries referred to in paragraph 14 of the Motion.

Response: The Liquidator will produce responsive documents.

14. All documents concerning any estimates of the net recoveries referred to in paragraph 14 of the Motion and Section 1.2 of the Agreement, including, but not limited to, the Liquidator's allegation that, under the Agreement, the AFIA Cedents would receive approximately \$72.5 million.

Response: The Liquidator will produce responsive documents. The \$72.5 million figure referred to in this request refers to the illustration provided on Exhibit A to the Liquidator's Supplemental Reply in Support of Motion for Approval of Agreement and Compromise with AFIA Cedents dated April 16, 2004, which is incorporated by reference as set forth in the preliminary statement above.

15. All documents concerning the determination that, under the Agreement, the AFIA Cedents would receive 50% of the net recoveries, as described in paragraphs 14 and 15 of the Motion, including, but not limited to, all documents concerning the level or amount of payment under the Agreement allegedly necessary to provide an incentive to the AFIA Cedents to file claims in Home's liquidation.

Response: The Liquidator will produce responsive documents.

16. All documents concerning the allegation in paragraph 21 of the Motion that "it is appropriate to agree that the AFIA Cedents may receive a portion of the net proceeds" because it "is in essence a cost of obtaining and collecting an asset of the Home estate for the benefit of the policyholders and other creditors of Home," including, but not limited to, all documents concerning any communications with respect to such allegation.

Response: The Liquidator objects to this 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.

17. All documents concerning your claim that any payment to the AFIA Cedents under the Agreement is not "on account of their claim" and does not violate RSA 402-C:44.I, as stated by Peter Roth at the July 15 Oral Argument.

- (b) Peter A. Bengelsdorf;
- (c) Gareth H. Hughes;
- (d) Maggie Mills; and
- (e) Jonathan Rosen.

Response: The Liquidator incorporates by reference the responses to the above requests, which include documents from files maintained by these individuals (except Margaret Mills, who has no such files).

22. All documents reflecting any notice you provided to any creditor(s) potentially impacted by the Agreement.

Response: The Liquidator objects to this 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. Notwithstanding this objection, the Liquidator will produce responsive documents.

23. All documents reflecting any attempts by you to enter into a settlement with any entity other than the AFIA Cedents on terms substantially similar to those of the Agreement.

Response: The Liquidator objects to this 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. Notwithstanding this objection, the Liquidator responds that there are no such documents.

24. All documents supporting your claim the Agreement was a compromise of a dispute.

Response: The Liquidator will produce responsive documents.

25. All documents supporting your claim that the Agreement does not have the effect of creating one or more subclass(es) among any class of creditors.



Response: The Liquidator objects to this 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.

26. All documents referred to in the Liquidator's responses to the ACE Companies' interrogatories dated October 1, 2004 (sic – October 4) ("Interrogatories") and all documents that you consulted or created in connection with your responses to the Interrogatories.

Response: The Liquidator objects to this request to the extent it seeks documents consulted or created in connection with responses to the Interrogatories. The Liquidator will produce documents referred to in the Liquidator's answers and objections to the ACE Interrogatories in accordance with those answers and objections.

27. All documents reflecting communications between the AFIA Cedents in the Liquidator's possession.

Response: The Liquidator incorporates the responses to the preceding requests and otherwise objects to the 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.

28. All documents regarding:
- i. the amount of claims filed by Class II creditors;
  - ii any analysis of whether Class II creditors will be paid in full; and
  - iii any analysis of the recovery for Class III creditors.

Response: The Liquidator objects to (i) of 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. The Liquidator will produce documents responsive to (ii) and (iii) from Spring 2003.

29. All documents which show which assets, if any, are owned, possessed, or controlled by the Home's U.K. branch, and the specific location of each such asset.

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

By his attorneys,

KELLY A. AYOTTE  
ATTORNEY GENERAL

Suzanne M. Gorman  
Senior Assistant Attorney General  
Civil Bureau  
33 Capitol Street  
Concord, New Hampshire 03301-6397  
(603) 271-3650



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J. David Leslie, pro hac vice  
Eric A. Smith, pro hac vice  
Rackemann, Sawyer & Brewster  
One Financial Center  
Boston, MA 02111  
(617) 542-2300

Date: November 24, 2004

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SERVICE LIST

Ronald L. Snow, Esq.  
Orr & Reno  
One Eagle Square  
P.O. Box 3550  
Concord, New Hampshire 03302-3550

Gary Lee, Esq.  
Pieter Van Tol, Esq.  
Lovells  
16<sup>th</sup> Floor  
900 Third Avenue  
New York, New York 10022

Gail M. Goering, Esq.  
Adam Goodman, Esq.  
Eric Haab, Esq.  
Lovells  
One IBM Plaza  
330 N. Wabash Avenue, Suite 1900  
Chicago, Illinois 60611

Andre Bouffard, Esq.  
Eric D. Jones, Esq.  
Rachlin Downs Martin PLLC  
199 Main Street  
P.O. Box 190  
Burlington, Vermont 05402-0190