

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 MOTION FOR PROTECTIVE ORDER

NOW COMES Roger A. Sevigny, Commissioner of Insurance for the State of New Hampshire, as Liquidator ("Liquidator") of The Home Insurance Company ("Home"), and moves for a protective order against three extremely burdensome non-party subpoenas purportedly served on "The Home Insurance Company in Liquidation, Roger A. Sevigny, Insurance Commissioner of the State of New Hampshire." Copies of the non-party subpoenas are attached as Exhibits A-C. They were issued in California in three actions by policyholders of Home against Zurich-American Insurance Company and certain affiliates and subsidiaries ("Zurich"), whom they assert was Home's alter ego. In the exercise of its broad discretion over discovery matters, see N.H. Super. Ct. R. 35(c), the Court should grant a protective order because the subpoenas are not only ineffective but also seek 48 broad and vague categories of documents for periods of ten and even twenty years – well beyond the period when Zurich is claimed to be Home's alter ego – that would impose a vast burden on the Home liquidation both in terms of staff resources and costs of counsel and document retrieval and review.

As an initial matter, the California subpoenas do not have effect in New Hampshire. Neither California nor New Hampshire give state subpoenas extraterritorial effect. Indeed, the California plaintiffs obtained Commissions from the California court but have failed to issue process in New Hampshire. Furthermore, response to the subpoenas as drafted would require the Liquidator to review 22 trailer trucks of documents plus a minimum of 25 million pages of

electronic records (many of which would need to be restored from outdated tapes first) to identify potentially responsive documents, and then review responsive documents for privilege and statutory confidentiality. This would require substantial efforts by senior liquidation staff and counsel (inside and outside) over several months, as well as additional staff time and significant out of pocket costs in retrieving, assembling and returning documents to storage, exceeding \$1 million.

Such efforts in response to non-party discovery that spans a period well beyond any conceivable time frame that Zurich could have been Home's alleged alter ego would distract the liquidation staff from the principal tasks of the liquidation, marshaling assets and determining claims (see RSA 402-C:21, 25, 41, 45), increase the costs of the liquidation to the detriment of creditors generally, and would not serve the fundamental purpose of "efficiency and economy of liquidation." RSA 402-C:1, IV(c). The Liquidator has made a proposal for more reasonable discovery (which would still involve substantial burden), but has received no substantive response. In the circumstances, the Court should grant a protective order against the defective, oppressive and unduly burdensome California Subpoenas. As further reasons, the Liquidator states:

Background

A. Zurich, Fuller-Austin, Western Asbestos, PepsiAmericas and the California Actions

1. In 1995, Zurich entered into a complex recapitalization transaction involving Home. The New Hampshire Commissioner of Insurance took control of Home when appointed as Rehabilitator of Home by the Order of Rehabilitation entered March 5, 2003, and then as Liquidator of Home by the Order of Liquidation entered June 11, 2003 (superseded by the Order of Liquidation entered June 13, 2003).

2. The Fuller-Austin Asbestos Settlement Trust, Western Asbestos Settlement Trust, and PepsiAmericas, Inc., are Home policyholders or alleged successors to Home policyholders. Together with the other plaintiffs in the actions described below, they have filed numerous proofs of claim with the Liquidator to be determined in the liquidation. Eight or more insurance guaranty funds may also be involved in handling some of these claims.

3. Fuller-Austin, Western Asbestos, and PepsiAmericas and the other plaintiffs have brought actions against Zurich and others in the Superior Court of California, County of San Francisco: Fuller-Austin Asbestos Settlement Trust et al. v. Zurich-American Ins. Co., et al, No. CGC-04-431719; Western Asbestos Settlement Trust et al. v. Zurich-American Ins. Co., et al., No. 04-436181; and PepsiAmericas, Inc., et al. v. Zurich-American Ins Co., et al., No. CGC-05-442140. The other plaintiffs include major corporations (such as Kraft Foods Global, Inc., and ITT Industries, Inc.), and Zurich is a large international insurance company. In the California actions, the plaintiffs contend, among other things, that the Zurich defendants were alter egos of Home and are responsible for Home's alleged obligations to the plaintiffs under Home insurance policies.

B. Events leading to the California Subpoenas.

4. On September 23, 2005, the Fuller-Austin plaintiffs filed a petition with the Merrimack County Superior Court requesting that the New Hampshire Court issue a subpoena to the Home in liquidation based upon an August 23, 2005 commission issued by the California Court in the Fuller-Austin case. In re Subpoena on The Home Insurance Company In Liquidation, Merrimack Superior Court Docket No. _____. The requested (but not issued) subpoena sought 48 categories of documents.

5. After a conference call, counsel for the Liquidator sent a letter to counsel to the parties to the Fuller Austin case on November 11, 2005. The letter outlined the Liquidator's concerns over the burden presented by the requested subpoena, asked whether the parties to the California case would be willing to bear the Liquidator's costs, and made a proposal for a more reasonable potential agreed scope of production. A copy of the letter is attached as Exhibit D.

6. On January 4, 2006, counsel for Fuller Austin responded in a letter refusing to pay any of the costs of production and stating Fuller Austin could not agree without further discussion to compromise on the scope of production. A copy of the letter is attached as Exhibit E. Counsel for the Liquidator responded by letter on January 18, 2006, requesting a written response to Liquidator's proposal to provide for coordination of positions among those seeking documents and to allow the Liquidator to assess the overall burden that might be imposed by any counterproposal. A copy of the letter is attached as Exhibit F.

C. The California Subpoenas

7. The Liquidator did not receive a response to the January 18, 2006 letter. Instead, on March 9, 2006, the New Hampshire Insurance Department received three purported subpoenas (the "California Subpoenas") issued in the three California actions and calling for production in Massachusetts. The California Subpoenas were issued by the plaintiffs in the California actions, who are all represented by the law firm of Morgan, Lewis & Bockius LLP ("Morgan Lewis").

8. The California Subpoenas (Exs. A-C) are essentially identical. Each consists of:

- a. A California Superior Court "Deposition Subpoena for Production of Business Records" signed by one of the plaintiff's attorneys at Morgan Lewis in San Francisco, California, and directed to "The Home Insurance Company in Liquidation, Roger A. Sevigny, Insurance Commissioner of the State of New Hampshire" in Concord, New Hampshire, seeking the production of business records at the Boston, Massachusetts office of Morgan Lewis;

- b. An exhibit listing the categories of documents to be produced. The Fuller-Austin list contains 48 categories that are the same as those in the earlier requested subpoena. The Western Asbestos and Pepsi Americas lists contain 47 categories but appear essentially the same; and
- c. “A Commission to Require Production and Inspection of Documents and Things from The Home Insurance Company in Liquidation” issued by the California Superior Court and directed to “The Courts of the State of New Hampshire and to a Certified Court Reporter of the State of New Hampshire or Other Person Authorized by Law to Administer Oaths and Record Testimony.” The Fuller-Austin Commission is the August 23, 2005 commission noted above, while the Western Asbestos and PepsiAmericas Commissions are dated February 24, 2006.

9. By letter dated April 7, 2006, counsel for the Liquidator advised counsel for the plaintiffs that the California Subpoenas were not effective because third party subpoenas do not operate extraterritorially under either California or New Hampshire law. The Liquidator also noted that plaintiffs had not provided any substantive response to the Liquidator’s proposal for a potential agreed scope of discovery. A copy of the letter is attached as Exhibit G.

10. Counsel for the California plaintiffs responded in a letter dated April 13, 2006, asserting that the California Subpoenas were effective as a matter of New Hampshire law and stating that “if your client contends that the subpoenas served upon them were improper, your client’s remedy lies with the courts.” April 13, 2006 Letter at 2 (copy attached as Exhibit H). With respect to the Liquidator’s proposal, counsel added that they were “willing to discuss your client’s production of all responsive documents listed on the subpoenas.” *Id.* (emphasis added). In the circumstances, the Liquidator seeks a protective order as set forth below.

ARGUMENT

THE COURT SHOULD GRANT A PROTECTIVE ORDER BECAUSE THE CALIFORNIA SUBPOENAS ARE NOT EFFECTIVE, AND THEY ARE OPPRESSIVE AND UNDULY BURDENSOME.

11. The Court has “broad discretion” in controlling discovery matters. E.g., *YYY Corp. v. Gadza*, 145 N.H. 53, 59 (2000). Under New Hampshire Superior Court Rule 35(c), the Court may for good cause shown “make any order which justice requires to protect a . . . person from annoyance, embarrassment, oppression, or undue burden or expense, including one of more of the following: (1) that the discovery not be had; (2) that the discovery may be had only on specified terms and conditions . . . (4) that certain matters not be inquired into, or that the scope of discovery be limited to certain matters” See *Robbins v. Kawall Corp.*, 120 N.H. 415, 453 (1980) (“The trial court has ample power to set appropriate time, place, manner and scope of restrictions on non-party discovery.”) In this instance, the Court should order that the discovery not be had because the California Subpoenas do not have extraterritorial effect and because the extremely broad discovery of 48 categories sought by the plaintiffs is oppressive and would impose undue burden and expense on the insolvent Home. In the alternative, the Court should order that the discovery be limited to the 14 categories of documents proposed by the Liquidator, conditioned upon payment of costs of production.

I. The Extraterritorial California Subpoenas Are Improper And Of No Effect.

12. The plaintiffs in the California actions improperly seek discovery of Home in Massachusetts by service in New Hampshire using California process, which they assert is effective as a matter of New Hampshire law. However, the California Subpoenas seeking discovery of the non-party Home do not have extraterritorial effect, even under California law. California does not purport to compel discovery of out-of-state witnesses through its own

process; attendance is instead to be compelled by the court in which the discovery is to take place. Discovery of nonparties is to be by deposition, and a party serving a deposition notice “shall use any process and procedures required and available under the laws of the state . . . where the deposition is to be taken to compel the deponent to attend and to testify, as well as to produce any document or tangible thing for inspection, copying, and any related activity.” Cal. Civil Code § 2026.010(c) (attached as Exhibit I) (emphasis added). See International Ins. Co. v. Montrose Chem. Corp., 231 Cal App. 3d 1367, 1371 (Cal. Ct. App. 1991) (“Subdivision (b)(2) of section 2026 [of the California Code of Civil Procedure, subsequently recodified as section 2026.010] permits a party to California litigation to depose a nonparty in another state according to the ‘process and procedures’ required and available under the laws of the other state.”). New Hampshire law also does not give nonparty subpoenas extraterritorial effect. “Out-of-state witnesses are beyond the subpoena powers of the State courts.” Moore v. Conifer Corp., 130 N.H. 795, 800 (1988), citing Ela v. Ela, 68 N.H. 312, 314 (1895).

13. The California Subpoenas thus do not have effect in New Hampshire. Instead, to have an effective subpoena, the plaintiffs need to obtain process from the New Hampshire courts. The plaintiffs started down this path by obtaining Commissions from the California court directed to the New Hampshire courts that authorize the New Hampshire courts to issue subpoenas for production of the requested documents. The Fuller Austin plaintiffs even filed a petition with the Merrimack County Superior Court to obtain such a subpoena. However, they did not obtain any order but instead chose merely to issue subpoenas in California. Those subpoenas do not have legal effect in New Hampshire.

14. In the April 13, 2006 letter, counsel for plaintiffs asserts that issuance of the California Subpoenas accords with New Hampshire procedures. This is not correct. New

Hampshire law does not authorize out-of-state subpoenas to have effect in New Hampshire merely because the courts of the other state have issued a commission. This would permit an out-of-state party to proceed by self-help: it can obtain a commission in another state and issue a subpoena in that state and assert the subpoena is effective in New Hampshire. This is not the law, and it is inconsistent with the California Commissions, which by their terms are directed to “The Courts of the State of New Hampshire and to a Certified Court Reporter of the State of New Hampshire or Other Person Authorized by Law to Administer Oaths and Record Testimony.”

15. The need for New Hampshire process is particularly acute here, as the discovery is sought from The Home Insurance Company in liquidation. Home is the subject of the Order of Liquidation entered on June 13, 2003, which enjoins all proceedings against Home and any act to obtain possession of or exercise control over property of Home. See Order of Liquidation ¶ (n) (1), (4). Pursuant to that order, the Liquidator is directed to take possession of the assets of Home and administer them under the orders of the liquidation court and is vested with title to all of the property, contracts and rights of action and all of the books and records of Home. See Order of Liquidation ¶ (f); RSA 402-C:21, I. The Liquidator is to take possession of all of the assets, property, books, records, accounts and other documents of Home. See Order of Liquidation ¶ (g). See RSA 402-C:21, I; RSA 402-C:54, I. Thus, disputes concerning the records of Home must be resolved by the Court in the liquidation proceeding.

16. In these circumstances, the California Subpoenas are of no force and effect in New Hampshire, and the Liquidator need not respond to them. The Court accordingly should issue a protective order directing that the discovery sought by those subpoenas “not be had.” N.H. Super. Ct. R. 35(c).

II. Even If The California Subpoenas Were Effective, The Discovery Sought Should Be Denied As Oppressive And Unduly Burdensome.

A. The California Subpoenas are vastly overbroad.

17. The California Subpoenas seek 48 categories of documents for time periods that exceed 10, 15 and in many cases 20 years. The requests are so sweeping and overwhelmingly broad that it is apparent that the plaintiffs are embarked on a “fishing expedition” at the expense of the insolvent Home, a non-party, while their discovery efforts should be directed at Zurich (a solvent defendant in the California cases). This unfocused approach is oppressive and unduly burdensome and extends well beyond the period where Zurich could allegedly have been Home’s alter ego. Especially where the plaintiffs have been unwilling to substantively respond to the Liquidator’s proposal by offering any compromise on the documents they seek, it is appropriate to enter a protective order denying discovery of the non-party Home. See Heidelberg Americas, Inc. v. Tokyo Kikai Seisakusho, Ltd., 333 F.3d 38, 41-42 (1st Cir. 2003).

18. The overbreadth of the California Subpoenas is evident from the list of categories requested in Fuller Austin subpoena (Ex. A at 2-5). (The Western Asbestos and PepsiAmericas subpoenas seek essentially the same categories of documents.) The Fuller Austin subpoena first seeks all documents that relate to Home’s financial condition from 1985 to the present – far beyond any period in which Zurich could have been Home’s alter ego. In the context of a major insurance company that did business throughout the United States and in certain foreign countries, that is an incredibly broad area. It encompasses the records of several departments, including the finance, treasury, accounting and actuarial departments, for many years, and goes far beyond any reasonable relevance to Fuller Austin’s claims in the California action. The requests include:

- All documents relating to budget information for Home (including affiliates) for the period 1985-1998. (Request 1)
- All documents from 1985 to present regarding Home's monthly and annual financial reports. (Request 6)
- All documents from 1985 to present that refer or relate to Home's quarterly Schedule P documents. (Request 7)
- All documents that refer or relate to Home's financial status from 1985 to present. (Request 8)
- All documents from 1990 to present that refer or relate to information regarding Home's premiums earned and claims paid before and after the recapitalization. (Request 30)
- All documents from 1985 to present that refer or relate to Home's investment portfolio. (Request 34)

19. The requests also seek documents concerning Home's operations since 1990 (again beyond any potential alter ego period). These general requests sweep in broad areas that are of no apparent relevance to the plaintiffs' claims, and they inquire into all operational activities and could seek all documents concerning the management of Home by Risk Enterprise Management ("REM"), which administered Home under a Services Agreement from 1995 to 2003. The requests include:

- All documents from 1990 to present regarding internal operational and management reports. (Request 3)
- All documents of those Home employees who worked on the recapitalization (e.g. Home Transition Team Managers) for the period 1990-1996. (Request 2)
- All documents from 1990 to present that refer or relate to information regarding Home's management and/or reporting structure and employees before and after the recapitalization. (Request 31)
- All documents from 1994 to present that refer or relate to the Services Agreement dated June 12, 1995 among REM, Home and others. (Request 38)

20. The requests also seek documents concerning Home's relationship with Zurich since 1990, including requests regarding a wide range of contracts between them. The requests include:

- All documents from 1990 to present that refer or relate to Zurich proposals or attempts to acquire Home's business. (Request 26)
- All documents from 1990 to present that refer or relate to the recapitalization of Home. (Request 27)

- All documents from 1990 to present that refer or relate to all Zurich reinsurance contracts. (Request 29)
- All documents from 1994 or 1995 to present that refer or relate to a number of contracts (and any payments under those contracts) entered in connection with Zurich's acquisition of control of Home in 1995, including a Renewal Rights Agreement, an Aggregate Excess of Loss Agreement, a Facultative Reinsurance Facility Agreement, a Portfolio Value Swap Agreement, a Services Agreement, a Securityholders' Agreement, and a Stop-Loss Reinsurance Treaty. (Requests 4, 5, 9-16, 35-40)

21. The requests also seek documents from 1994 to present concerning requests for information by the New Hampshire Insurance Department of Zurich or Home concerning a Facultative Reinsurance Facility Agreement and a Fronting Amendment, and Zurich's or Home's responses. (Requests 17-24). Any such requests and responses would be confidential and not subject to subpoena pursuant to the statutes concerning examinations of insurers (RSA 400-A:37 IV-a), examinations of insurance holding companies (RSA 401-B:7), risk based capital plans and reports (RSA 404-F:8), or information requested in addition to annual financial statements (RSA 400-A:36).

22. In support of inappropriate efforts to determine claims against Home in California, the Fuller-Austin plaintiffs' requests also seek documents concerning policies issued by Home to the plaintiffs and coverage or claims under those policies. The requests encompass all claims ever made under the policies, which is clearly beyond matters relevant to the action. (The other California subpoenas seek this discovery regarding policies and claims for the other plaintiffs.) The requests also seek documents concerning the claims asserted in the proof of claim they filed with the Liquidator, which are pending matters in the liquidation. The requests include:

- All documents comprising individual policy, underwriting and claims files for each policy identified in the First Amended Complaint. (Request 42)
- All documents that refer or relate to communications between Home and the policyholders regarding claims for coverage under the policies, including but not

limited to notice letters, reservation of rights letters and coverage determination letters. (Requests 43-44)

- All documents that refer or relate to defense, indemnification, settlement or other payments made by Home under the policies or settlement or release agreements. (Requests 45-46)
- All documents that refer or relate to proofs of claim and other submissions made by policyholders to Home's liquidator under the policies. (Request 47)
- All documents that refer or relate to communications between the policyholders and Home's liquidator. (Request 48).

B. Review and production of the voluminous documents sought is oppressive and unduly burdensome.

23. The requests made by the California plaintiffs' subpoenas are overly broad (beyond the period when Zurich could have been Home's alter ego) and unduly burdensome because of the volume of documents involved (at least 11,000 boxes worth plus a minimum of 25 million pages of electronic records) and the resources in time and money that will need to be spent identifying and assembling responsive documents and then in reviewing them for privilege or other ground for confidentiality. Broad requests for "financial" or "operations" records must be considered in the context of the approximately 160,000 boxes of documents in offsite storage and the equivalent of thousands more boxes at Home's two operations centers in New York and Manchester. Affidavit of Peter A. Bengelsdorf, Special Deputy Liquidator ("Bengelsdorf Aff.") ¶¶ 2-3.

24. The requests for financial records from 1985 to the present encompasses the records of several departments (finance, investment, treasury, accounting, actuarial) for that twenty year period. Based on a preliminary review¹ (which could not be limited by date), there are approximately 6,000 boxes of such records in off-site storage, and an estimated 300 boxes of financial records at the Home liquidation's operational headquarters in New York. The requests

¹ The estimates of boxes and documents in this motion are the Liquidator's present estimates based on preliminary investigation. The numbers could move either up or down as investigation continues. The Liquidator may raise additional issues as more is learned about the available records.

for operational and management records from 1990 would extend to include not only reports (estimated at approximately 30 boxes) and records of employees on the distribution list for the recapitalization transaction (approximately 2,000 boxes not limited by date, much of which would not concern that transaction). Plaintiffs also seek documents that relate to the Services Agreement under which REM administered Home, which could include essentially all financial, claims, and administrative records for the period 1995 to 2003. Bengelsdorf Aff. ¶ 3.

25. The requests for policy and claims records and materials concerning the proofs of claim also involve voluminous documents. The California subpoenas identify approximately 180 policies allegedly issued to or for the benefit of the plaintiffs. The policies and underwriting files for the plaintiffs could consist of thousands of pages. Moreover, based on preliminary review, there are or were over 900 claims under policies issued to plaintiffs. Storage information is available for approximately 300 claims, and those claims involve over 350 boxes. There are also over 1,600 boxes of claims drafts (including microfiche that would need to be printed out) that may contain information on paid claims. Additional materials are being submitted in connection with the plaintiffs' proofs of claim. It would subvert the process established for determination of claims in the Home liquidation to address the policy and claims materials while the proofs of claim are pending in the liquidation. Bengelsdorf Aff. ¶ 4.

26. Production of the voluminous requested records for production would be an extremely time-consuming and expensive task that is oppressive and unduly burdensome. The at least 11,000 boxes (about 22 tractor trailers loads) in off-site storage would need to be retrieved. These boxes, and the additional material at the Home liquidation's operational headquarters, would need to be stored and reviewed to determine what of the voluminous materials is actually responsive to the requests. Responsive materials would have to be reviewed for attorney-client

privilege and work product materials. Both of these tasks would take significant time of senior liquidation staff and counsel over several months: staff to identify responsive documents and identify the personnel involved in the records, counsel to identify and log privileged documents. The Home staff involved in the recapitalization transaction and many of the contracts with Zurich included a number of attorneys, and Home also had outside counsel. Home's files thus are expected to contain many privileged documents and will need to be reviewed with care. Certain of the materials, including financial records, would also need to be reviewed to determine the applicability of the statutory confidentiality provided by, e.g., RSA 400-A:36 VIII (information required by Commissioner in addition to annual financial statements "shall be privileged"), 400-A:37 IV-a (examination records are not subject to discovery), RSA 401-B:7 (holding company examination records are not subject to subpoena), and RSA 404-F:8 (risk based capital plans and reports are not subject to subpoena). Documents to be produced would need to be Bate-stamped and copied. See *Bengelsdorf Aff.* ¶ 5.

27. The request is also oppressive and unduly burdensome to the extent it seeks electronic records. In August 2003, the Liquidator received consolidated backup tapes from REM with data from ten servers covering an unknown period. The tapes are believed to contain approximately 40 gigabytes (GB) of information. Identification of responsive records from this data would require restoring the data to servers from the tapes and then manual review of the files on the restored servers. Seven of the tapes are from servers that used an older operating system. The Home liquidation would not be able to restore these tapes internally because the liquidation's hardware is not compatible with the old servers or their software. The liquidation could restore the data from the other three servers, but it would need to lease or buy hardware to do so. Once the data was recovered, it would need to be reviewed both to identify any

responsive documents and to separate out documents regarding REM clients other than Home. The responsive documents would then need to be reviewed for privilege. Bengelsdorf Aff. ¶ 6.

28. The volume of information on these tapes is tremendous. A full page (without spaces) represents approximately 7 kilobytes (kb) of data, so the 40 GB of information when printed would take approximately 5.7 million pages. (Depending on fonts and the type of document, such as Word, Excel, email, it could be four to five times that number.) Given this volume of data, review would require significant time of senior liquidation staff and counsel at tremendous cost. Bengelsdorf Aff. ¶ 7.

29. The liquidation's computer system was established in 2003. The liquidation system contains approximately 140 GB of data, or approximately 20 million pages at a minimum. The review necessary to identify any responsive records on that system would need to be conducted by each of the liquidation staff involved (to the extent they are still employed by the liquidation). This would again require significant time from senior liquidation staff, as well as counsel's involvement in privilege review. Bengelsdorf Aff. ¶ 8.

30. The breadth of the requests, the volume of documents involved, the senior staff and counsel time required to respond, and the out of pocket costs of retrieving and reviewing the documents make the California Subpoenas oppressive and unduly burdensome. Here, the subpoenas are directed at an insolvent insurer in liquidation. They will thus take the time of liquidation staff and distract them from the asset marshalling and claim determination efforts that are the focus of the liquidation. See RSA 402-C:21, 402-C:25, 402-C:45. Moreover, the money spent on the requested production will reduce the assets available for distribution to the policyholders and other creditors of Home, and this burden would not serve the essential purpose of "efficiency and economy of liquidation." RSA 402-C:1, IV(c). Especially in the context of

an insolvent nonparty insurer, the California Subpoenas are oppressive and unduly burdensome. See *Bengelsdorf Aff.* ¶¶ 2-8. The Court should accordingly direct that discovery as requested in the subpoenas “not be had.” N.H. Super. Ct. R. 35(c). “[O]pen-ended ‘fishing expeditions’ are not permitted.” *Robbins*, 120 N.H. at 453.

C. The Liquidator attempted to address plaintiffs’ requests through a reasonable proposal for production, but has not received a substantive response.

31. The Liquidator sought to reasonably address the overbreadth and undue burden issues presented by the Fuller Austin Commission through the November 11, 2005 proposal. Exhibit D. That proposal was a careful effort to set forth a more narrowly drawn set of categories for potential production without imposing an overwhelming burden on the insolvent Home. The Liquidator asked plaintiffs’ counsel for a written response so that the other parties to the case could comment. Exhibit E. This would permit coordination of positions among those seeking documents and would allow the Liquidator to assess the overall burden that might be imposed by any counterproposal from the plaintiffs. The Liquidator has made clear that the proposal extends to the plaintiffs in all three California actions. See Exhibit G. However, the plaintiffs have not provided any substantive response to the proposal or indicated any willingness to reduce the scope of their demands. See Exhibit H.

32. The Liquidator’s proposal is reasonable. It consolidated many of the 48 requests into 14 more focused categories of identifiable documents. Ex. D at 5. The proposal also used time frames that more reasonably run from about the time of the 1995 transactions that appear to be the subject of plaintiffs’ actions to the time when Home was placed in rehabilitation. Specifically, the Liquidator proposed to provide:

- Budgets for Home and its subsidiaries dated 1994 – 1998.
- Home’s monthly and annual financial reports produced by Home’s executive management (management reporting directly to Home’s CEO) dated 1994 – 1998.
- Home’s annual statements for years 1985 – 2002.
- Internal operational and management reports produced by Home’s executive management dated 1994 – 1998.
- Documents dated 1994 – 1996 concerning Zurich’s recapitalization of Home as described in Zurich’s Form A application as amended.
- Documents dated 1994 – February 2003 concerning the Renewal Rights Agreement, Aggregate Excess of Loss Reinsurance Agreement, Facultative Reinsurance Agreement, the Fronting Amendment, Portfolio Value Swap Agreement, Services Agreement, and Securityholders’ Agreement, including payments under those agreements.
- Documents dated 1995 – 1998 concerning communications from Home to its policyholders regarding Home’s recapitalization by Zurich and possible renewal of policies by Zurich.
- Documents dated 1990 – February 2003 concerning the Aggregate Excess of Loss Cover, including payments thereunder.

(To avoid an unreasonably burdensome search, the proposal does not propose to review individual insureds’ underwriting, policy or claims files for documents in these categories.)

Bengelsdorf Aff. ¶ 9.

33. Since the Liquidator’s proposal contemplates production of documents concerning the recapitalization and various contracts involving Zurich, it will still require a significant amount of time, resources and expense. It is anticipated that the proposal would require review for responsiveness and potentially privilege of over 100 boxes of documents. This will necessarily involve the attention and time of senior liquidation staff and counsel, as well as the related retrieval and return costs. Bengelsdorf Aff. ¶ 10.

34. As the claims of Fuller-Austin (and the other California plaintiffs) against Home will be determined in the New Hampshire liquidation proceeding, the Liquidator proposed to defer the requests for documents concerning claims for coverage under Home policies. Fuller Austin and the other plaintiffs have filed proofs of claim with the Liquidator asserting claims for coverage under Home policies. The Liquidator is investigating those claims, which will be the

subject of determinations in accordance with the Claims Procedures Order entered January 19, 2005. Claims against Home are to be determined in the Home liquidation. See RSA 402-C:38, C:41, C:45. Issues of discovery regarding files concerning plaintiffs' past and present claims against Home and the policies involved in those claims should await the determination of those claims in the liquidation. See *Bengelsdorf Aff.* ¶ 11.

35. Since Insurance Department requests for information from Home or Zurich concerning the Facultative Reinsurance Facility Agreement and the responses to those requests would be subject to statutory confidentiality, a search for such records would be unwarranted. Such requests and responses would be confidential and not subject to subpoena pursuant to RSA 400-A:37, IV-a(a) (and former RSA 400-A:37 IV(d)), RSA 401-B:7, and RSA 404-F:8, I. In these circumstances, the Liquidator did not propose to conduct a pointless search for those documents. Similarly, given the burden of searching for electronic records, the Liquidator did not propose to conduct such a search. See *Bengelsdorf Aff.* ¶ 12.

36. Especially in the context of an insolvent insurer, the Liquidator's proposal is a reasonable approach to the requests underlying the California Subpoenas. While it still would involve a significant burden, that burden arguably would not be undue. If the Court were to determine that discovery based on the California Subpoenas is appropriate, the Court should issue a protective order limiting the discovery to that set forth in paragraph 32 above.

37. Because of the significant burden presented by even the Liquidator's proposal, however, the Court should direct that the plaintiffs, including large corporations such as Kraft Foods and ITT, and any other party such as Zurich that seeks documents through the California Subpoenas, to pay the Liquidator's costs of making the production as a condition of the production. See N.H. Super. Ct. R. 35(c)(2) (court may issue "any order which justice requires

to protect a party or person from . . . oppression, or undue burden or expense, including . . . that the discovery may be had only on specified terms or conditions”).

38. The types of factors considered by the federal courts in evaluating requests for cost shifting even among parties strongly support requiring those issuing the California Subpoenas to pay the Home liquidation’s costs of responding. See, e.g., Hagemeyer North Am., Inc. v. Gateway Data Sciences Corp., 222 F.R.D. 594, 602 (E.D. Wisc. 2004); Rowe Entertainment, Inc. v. The William Morris Agency, Inc., 205 F.R.D. 421, 429 (S.D.N.Y. 2002). The requests in the subpoenas are broad and vague, rather than specific; much of the information would be available from other sources (i.e., Zurich); the cost of production is great; the plaintiffs and Zurich have resources while Home is insolvent and in liquidation; the production might conceivably benefit plaintiffs or Zurich but does not benefit the Home – which of course is a nonparty. “[T]he rationale for the general rule [that parties must bear the burden of discovery costs] is inapplicable where the discovery demands are made on nonparties. . . . [A] witness’s nonparty status is an important factor to be considered in determining whether to allocate discovery costs on the demanding or producing party.” United States v. Columbia Broadcasting Sys., Inc., 666 F.2d 364, 372 (9th Cir.), cert. denied, 457 U.S. 1118 (1982); In re Letters Rogatory, 144 F.R.D. 272, 278 (E.D. Pa. 1992). If a party “wishes to proceed against a non-party rather than a party, it should pay for the burden of [the nonparty’s] response.” Mycogen Plant Science, Inc. v. Monsanto Co., 164 F.R.D. 623, 628 (E.D. Pa. 1996). The insolvent nonparty Home should not be required to incur the expense of the production here.

WHEREFORE, the Liquidator respectfully requests that this Court:

A. Grant this Motion for Protective Order;

B. Enter an Order denying enforcement of the California subpoenas, or in the alternative, directing that the Liquidator need only respond to the California subpoenas by producing the documents in the categories proposed by the Liquidator as set forth in paragraph 32 above conditioned upon the payment of costs by the persons pursuing the subpoenas; and

C. Grant such other and further relief as justice may require.

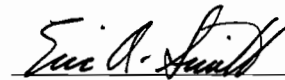
Respectfully submitted,

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

By his attorneys,

KELLY A. AYOTTE
ATTORNEY GENERAL

Christopher J. Marshall
Civil Bureau
New Hampshire Department of Justice
33 Capitol Street
Concord, NH 03301-6397
(603) 271-3650




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

May 1, 2006

Certificate of Service

I hereby certify that a copy of the foregoing Liquidator's Motion for Protective Order was sent, this 1st day of May, 2006, by first class mail, postage prepaid to all persons on the attached service list and by overnight courier to Morgan Lewis & Bockius, counsel for the plaintiffs in the California actions.



Eric A. Smith

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

In the Matter of the Liquidation of
The Home Insurance Company
Docket No. 03-E-0106

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Michael Cohen, Esq.
Cohen & Buckley, LLP
1301 York Road
Baltimore, Maryland 21093

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982(a)(15.2)

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Jeffrey S. Raskin (State Bar No. 169096) Megan K. Rosichan (State Bar No. 238561) MORGAN, LEWIS & BOCKIUS LLP One Market, Spear Street Tower San Francisco, CA 94105 TELEPHONE NO.: 415.442.1000 FAX NO. (Optional): 415.442.1001 E-MAIL ADDRESS (Optional): jraskin@morganlewis.com ATTORNEY FOR (Name): Plaintiffs	MAR 09 2006 N.H. INSURANCE DEPARTMENT FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Francisco STREET ADDRESS: 400 McAllister Street MAILING ADDRESS: CITY AND ZIP CODE: San Francisco, CA 94102 BRANCH NAME:	
PLAINTIFF/PETITIONER: FULLER-AUSTIN ASBESTOS SETTLEMENT TRUST, et al. DEFENDANT/RESPONDENT: ZURICH-AMERICAN INSURANCE COMPANY, et al.	
DEPOSITION SUBPOENA FOR PRODUCTION OF BUSINESS RECORDS	CASE NUMBER: CGC-04-431719

THE PEOPLE OF THE STATE OF CALIFORNIA, TO (name, address, and telephone number of deponent, if known):

The Home Insurance Company in Liquidation, Roger A. Sevigny, Insurance Commissioner of the State of New Hampshire, 56 Suncook Road, Concord, New Hampshire 03301

1. YOU ARE ORDERED TO PRODUCE THE BUSINESS RECORDS described in item 3, as follows:

To (name of deposition officer): Jeffrey W. Moss, Esq.
 On (date): April 13, 2006 At (time): 10:00 AM
 Location (address): Morgan, Lewis & Bockius LLP, 225 Franklin Street, Ste. 1705, Boston, MA 02110

Do not release the requested records to the deposition officer prior to the date and time stated above.

- a. by delivering a true, legible, and durable copy of the business records described in item 3, enclosed in a sealed inner wrapper with the title and number of the action, name of witness, and date of subpoena clearly written on it. The inner wrapper shall then be enclosed in an outer envelope or wrapper, sealed, and mailed to the deposition officer at the address in item 1.
- b. by delivering a true, legible, and durable copy of the business records described in item 3 to the deposition officer at the witness's address, on receipt of payment in cash or by check of the reasonable costs of preparing the copy, as determined under Evidence Code section 1563(b).
- c. by making the original business records described in item 3 available for inspection at your business address by the attorney's representative and permitting copying at your business address under reasonable conditions during normal business hours.
2. The records are to be produced by the date and time shown in item 1 (but not sooner than 20 days after the issuance of the deposition subpoena, or 15 days after service, whichever date is later). Reasonable costs of locating records, making them available or copying them, and postage, if any, are recoverable as set forth in Evidence Code section 1563(b). The records shall be accompanied by an affidavit of the custodian or other qualified witness pursuant to Evidence Code section 1561.
3. The records to be produced are described as follows: Please see Attachment A.

Continued on Attachment 3.

4. IF YOU HAVE BEEN SERVED WITH THIS SUBPOENA AS A CUSTODIAN OF CONSUMER OR EMPLOYEE RECORDS UNDER CODE OF CIVIL PROCEDURE SECTION 1985.3 OR 1985.6 AND A MOTION TO QUASH OR AN OBJECTION HAS BEEN SERVED ON YOU, A COURT ORDER OR AGREEMENT OF THE PARTIES, WITNESSES, AND CONSUMER OR EMPLOYEE AFFECTED MUST BE OBTAINED BEFORE YOU ARE REQUIRED TO PRODUCE CONSUMER OR EMPLOYEE RECORDS.

DISOBEDIENCE OF THIS SUBPOENA MAY BE PUNISHED AS CONTEMPT BY THIS COURT. YOU WILL ALSO BE LIABLE FOR THE SUM OF FIVE HUNDRED DOLLARS AND ALL DAMAGES RESULTING FROM YOUR FAILURE TO OBEY.

Date issued: March 2, 2006

Megan K. Rosichan
 (TYPE OR PRINT NAME)


 (SIGNATURE OF PERSON ISSUING SUBPOENA)

Attorneys for Plaintiffs
 (TITLE)

(Proof of service on reverse)

EXHIBIT A

**DOCUMENTS REQUESTED FOR PRODUCTION BY THE HOME INSURANCE
COMPANY IN LIQUIDATION**

1. All DOCUMENTS (The term "DOCUMENTS" shall refer to the original, or where the original is not within your control or custody a the duplicate, of any writing, including all drafts and copies bearing notations, marks or matters not found on the original and/or duplicate. The term also includes any information contained on microfilm or in computers, computer disks, tapes, or otherwise stored electronically. The term includes all attachments and enclosures to any document) relating to budget information for HOME HOLDINGS INC. and its affiliates (collectively "HOME") for the period 1985-1998.
2. All DOCUMENTS of those HOME employees who worked on the recapitalization (e.g. HOME Transition Team Managers) for the period 1990-1996.
3. All DOCUMENTS from 1990 to present regarding internal operational and management reports.
4. All DOCUMENTS from 1994 to present regarding the Renewal Rights Agreement, dated June 12, 1995.
5. All DOCUMENTS from 1995 to present that refer or relate to any payments made by ZURICH (The term "ZURICH" refers to any Zurich Insurance Company affiliate, subsidiary or related entity, including but not limited to, Zurich Insurance Company, Zurich Centre Investments Limited, Insurance Partners Advisors, L.P., ZCI Investments Limited, Zurich Insurance Company, US Branch, Zurich-American Insurance Company, Zurich American Insurance Company of Illinois, Steadfast Insurance Company, and/or Risk Enterprise Management Limited) to HOME pursuant to the Renewal Rights Agreement.
6. All DOCUMENTS from 1985 to present regarding HOME'S monthly and annual financial reports.
7. All DOCUMENTS from 1985 to present that refer or relate to HOME's quarterly Schedule P documents.
8. All DOCUMENTS that refer or relate to HOME's financial status from 1985 to present.
9. All DOCUMENTS from 1994 to present that refer or relate to the Aggregate Excess of Loss Reinsurance Agreement, dated June 12, 1995.
10. All DOCUMENTS from 1994 to present that refer or relate to any payments made by ZURICH to HOME pursuant to the Aggregate Excess of Loss Reinsurance Agreement.
11. All DOCUMENTS from 1994 to present that refer or relate to the Facultative Reinsurance Facility Agreement, dated December 24, 1994.
12. All DOCUMENTS from 1994 to present that refer or relate to any amendment to the Facultative Reinsurance Facility Agreement.
13. All DOCUMENTS from 1994 to present that refer or relate to any payments made by ZURICH to HOME pursuant to the Facultative Reinsurance Facility Agreement.
14. All DOCUMENTS from 1994 to present that refer or relate to any payments made by ZURICH to HOME pursuant to any amendment to the Facultative Reinsurance Facility Agreement.

15. All DOCUMENTS from 1994 to present that refer or relate to any payments made by HOME to ZURICH pursuant to the Facultative Reinsurance Facility Agreement.
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17. All DOCUMENTS from 1994 to present that refer or relate to any request for information by the New Hampshire Insurance Department to ZURICH regarding the Facultative Reinsurance Facility Agreement.
18. All DOCUMENTS from 1995 to present that refer or relate to any response to the request for information by the New Hampshire Insurance Department to ZURICH regarding the Fronting Amendment.
19. All DOCUMENTS from 1994 to present that refer or relate to any request for information by the New Hampshire Insurance Department to HOME regarding the Facultative Reinsurance Facility Agreement.
20. All DOCUMENTS from 1994 to present that refer or relate to any response by HOME to any request for information by the New Hampshire Insurance Department regarding the Facultative Reinsurance Facility Agreement.
21. All DOCUMENTS from 1994 to present that refer or relate to any request for information by the New Hampshire Insurance Department to ZURICH regarding any amendment to the Facultative Reinsurance Facility Agreement.
22. All DOCUMENTS from 1994 to present that refer or relate to any response by ZURICH to any request for information by the New Hampshire Insurance Department regarding any amendment to the Facultative Reinsurance Facility Agreement.
23. All DOCUMENTS from 1994 to present that refer or relate to any request for information by the New Hampshire Insurance Department to HOME regarding any amendment to the Facultative Reinsurance Facility Agreement.
24. All DOCUMENTS from 1994 to present that refer or relate to any response by HOME to the request for information by the New Hampshire Insurance Department regarding any amendment to the Facultative Reinsurance Facility Agreement.
25. All DOCUMENTS from 1995 to 1998 that refer or relate to communications from HOME to HOME policyholders regarding HOME's recapitalization and possible renewal of policies by ZURICH.
26. All DOCUMENTS from 1990 to present that refer or relate to ZURICH proposals or attempts to acquire HOME's business.
27. All DOCUMENTS from 1990 to present that refer or relate to the recapitalization of HOME.
28. All DOCUMENTS from 1995 to present that refer or relate to any compensation ZURICH paid for HOME's insurance business.
29. All DOCUMENTS from 1990 to present that refer or relate to all ZURICH reinsurance contracts.
30. All DOCUMENTS from 1990 to present that refer or relate to information regarding HOME's premiums earned and claims paid before and after the recapitalization.
31. All DOCUMENTS from 1990 to present that refer or relate to information regarding HOME's management and/or reporting structure and employees before and after the recapitalization.

32. All DOCUMENTS from 1990 to present that refer or relate to any payments made by HOME to ZURICH.
33. All DOCUMENTS from 1990 to present that refer or relate to any payments made by ZURICH to HOME.
34. All DOCUMENTS from 1985 to present that refer or relate to HOME's investment portfolio.
35. All DOCUMENTS from 1994 to present that refer or relate to the Portfolio Value Swap Agreement dated June 12, 1995.
36. All DOCUMENTS from 1994 to present that refer or relate to any payments made to HOME under the Portfolio Value Swap Agreement dated June 12, 1995.
37. All DOCUMENTS from 1994 to present that refer or relate to any earnings or profits made by ZURICH under the Portfolio Value Swap Agreement dated June 12, 1995.
38. All DOCUMENTS from 1994 to present that refer or relate to the Services Agreement, dated June 12, 1995 among Risk Enterprise Management Limited, Zurich Centre Investments Limited, Home Holdings, Inc., The Home Insurance Company, U.S. International Reinsurance Company, The Home Insurance Company of Illinois and The Home Insurance Company of Wisconsin.
39. All DOCUMENTS from 1994 to present that relate or refer to the Securityholders' Agreement, dated June 12, 1995, among Home Holdings, Inc., ZCI Investments Limited, Centre Reinsurance (Bermuda Limited, Insurance Partners Advisors L.P., and Trygg-Hansa AB.
40. All DOCUMENTS from 1994 to present that refer or relate to the "Stop-Loss Reinsurance Treaty" as referenced in Change No. 2 Form A of the Statement Regarding the Acquisition of Control of or Merger With a Domestic insurer, dated May 16, 1995.
41. All DOCUMENTS from 1994 to present that refer or relate to payments made by HOME or the liquidator to any plaintiff for claims asserted under the policies identified in the AMENDED COMPLAINT (The term "FIRST AMENDED COMPLAINT" shall refer to the First Amended Complaint filed on August 3, 2004 in Fuller-Austin Asbestos Settlement Trust, et al. v. Zurich American Insurance Company, et al., San Francisco Superior Court Case No. GCG-04-431719.
42. All DOCUMENTS comprising individual policy, underwriting and claims files for each policy identified in the FIRST AMENDED COMPLAINT.
43. All DOCUMENTS that refer or relate to communications between HOME and the policyholders identified in the FIRST AMENDED COMPLAINT (or plaintiffs as alleged beneficiaries/successors), regarding claims for coverage under the policies identified in the FIRST AMENDED COMPLAINT, including but not limited to notice letters, reservation of rights letters, and coverage determination letters.
44. All DOCUMENTS that refer or relate to communications between HOME and the policyholders identified in the FIRST AMENDED COMPLAINT (or plaintiffs as alleged beneficiaries/successors) regarding claims for coverage under the policies identified in the complaint, including but not limited to notice letters, reservation of rights letters, and coverage determination letters.
45. All DOCUMENTS that refer or relate to defense, indemnification, settlement or other payments made by HOME under the policies identified in the FIRST AMENDED COMPLAINT.

46. All DOCUMENTS that refer or relate to settlement and or release agreements that refer or relate to the policies identified in the FIRST AMENDED COMPLAINT.
47. All DOCUMENTS that refer or relate to proofs of claim and other submissions made by the policyholders identified in the FIRST AMENDED COMPLAINT to HOME's liquidator under the policies identified in the FIRST AMENDED COMPLAINT.
48. Documents that refer or relate to communications between the policyholders identified in the FIRST AMENDED COMPLAINT and HOME's liquidator, regarding claims submitted to the liquidator under the policies identified in the FIRST AMENDED COMPLAINT.

PLAINTIFF/PETITIONER: FULLER-AUSTIN ASBESTOS SETTLEMENT TRUST, et al.	CASE NUMBER: CGC-04-431719
DEFENDANT/RESPONDENT: ZURICH-AMERICAN INSURANCE COMPANY, et al.	

PROOF OF SERVICE OF DEPOSITION SUBPOENA FOR PRODUCTION OF BUSINESS RECORDS

1. I served this *Deposition Subpoena for Production of Business Records* by personally delivering a copy to the person served as follows:

a. Person served (name):

b. Address where served:

c. Date of delivery:

d. Time of delivery:

e. (1) Witness fees were paid.
Amount: \$ 0.00

(2) Copying fees were paid.
Amount: \$ 0.00

f. Fee for service: \$ 0.00

2. I received this subpoena for service on (date):

3. Person serving:

- a. Not a registered California process server.
- b. California sheriff or marshal.
- c. Registered California process server.
- d. Employee or independent contractor of a registered California process server.
- e. Exempt from registration under Business and Professions Code section 22350(b).
- f. Registered professional photocopier.
- g. Exempt from registration under Business and Professions Code section 22451.
- h. Name, address, telephone number, and, if applicable, county of registration and number:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(For California sheriff or marshal use only)
I certify that the foregoing is true and correct.

Date:

(SIGNATURE)

(SIGNATURE)

1 Paul Anton Zevnik - State Bar No. 75343
Michel Y. Horton - State Bar No. 114243
2 Jeffrey S. Raskin - State Bar No. 169096
MORGAN, LEWIS & BOCKIUS LLP
3 One Market, Spear Street Tower
San Francisco, California 94105
4 Telephone: 415.442.1000
Facsimile: 415.442.1001

5 *Attorneys for Plaintiffs*

6
7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN FRANCISCO

10 FULLER-AUSTIN ASBESTOS
SETTLEMENT TRUST; et al.,

11 Plaintiffs,

12 vs.

13 ZURICH-AMERICAN INSURANCE
14 COMPANY, individually and as successor
to Zurich Insurance Company; ZURICH
15 AMERICAN INSURANCE COMPANY
OF ILLINOIS; STEADFAST INSURANCE
16 COMPANY, and DOES 1-200,

17 Defendants.

Case No. GCG-04-431719

**COMMISSION TO REQUIRE
PRODUCTION AND INSPECTION OF
DOCUMENTS AND THINGS FROM
THE HOME INSURANCE COMPANY
IN LIQUIDATION**

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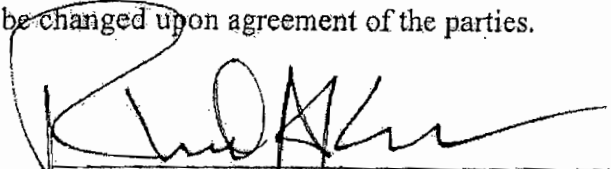
THE PEOPLE OF THE STATE OF CALIFORNIA TO:

THE COURTS OF THE STATE OF NEW HAMPSHIRE AND TO A CERTIFIED COURT REPORTER OF THE STATE OF NEW HAMPSHIRE OR OTHER PERSON AUTHORIZED BY LAW TO ADMINISTER OATHS AND RECORD TESTIMONY

WHEREAS, it appears to the Superior Court of the State of California, County of San Francisco, on a showing of good cause by the parties in the above-entitled action, that The Home Insurance Company In Liquidation possesses documents and/or things that are material to the action currently pending before this Court between Fuller-Austin Asbestos Settlement Trust, et al. and Zurich American Insurance Company, et al. The documents and things requested can now be produced and inspected in Merrimack County, State of New Hampshire, and you are hereby authorized and empowered to issue subpoena(s) for the production and inspection of documents and things.

You are authorized and empowered, at the times and places noticed by counsel, to require the production of documents and things produced pursuant to the duly issued subpoena(s), along with this commission, in a sealed envelope(s) with the title of the action marked "Request for Production of Documents and Things from The Home Insurance Company In Liquidation" by certified mail to Dawn S. Pittman, Esq., Morgan, Lewis & Bockius LLP, One Market, Spear Tower, San Francisco, California, 94105, as counsel for plaintiffs, and to Albert P. Bedecarre, Quinn Emanuel Urquhart Oliver & Hedges, LLP, 50 California Street, 22nd Floor, San Francisco, California, 94111, as counsel for defendants. The dates, times and locations for the production and inspection of the documents and things may be changed upon agreement of the parties.

Dated: 8/23/05



Judge of the Superior Court

RICHARD A. KRAMER



Merrimack County Sheriff's Office

163 North Main St.
Concord, NH 03301
Phone: 603-225-5583

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N.H. INSURANCE DEPARTMENT

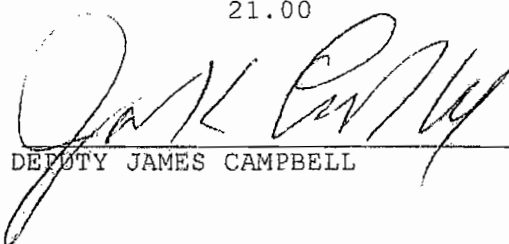
HOME INSURANCE COMPANY IN LIQUIDATION
UNKNOWN
UNKNOWN, NH

MERRIMACK, SS

DATE: MARCH 9, 2006

I, DEPUTY JAMES CAMPBELL, this day at 10:45^{AM}, summoned the within named defendant THE HOME INSURANCE COMPANY IN LIQUIDATION, by leaving at the office of Roger Sevigny, Insurance Commissioner for the State of New Hampshire its true and lawful attorney for the service of process under and by virtue of Chapter 405-10 NH RSA as amended, two true and attested copies of this Subpeona and I paid said Commissioner for the State twenty-five (\$25.00) dollars as their fee for accepting service.

FEES:	
Service:	15.00
Misc:	
PD NH INSURANCE COMMISSIONER	25.00
Postage	1.00
Travel	0.00
Notary	5.00
Total:	21.00


 DEPUTY JAMES CAMPBELL, Deputy Sheriff

A TRUE COPY ATTEST:


 James K. Campbell, Deputy Sheriff

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Jeffrey S. Raskin (State Bar No. 169096) Megan K. Rosichan (State Bar No. 238561) MORGAN, LEWIS & BOCKIUS LLP One Market, Spear Street Tower San Francisco, CA 94105 TELEPHONE NO.: 415.442.1000 FAX NO. (Optional): 415 442-1001 E-MAIL ADDRESS (Optional): jraskin@morganlewis.com ATTORNEY FOR (Name): Plaintiffs		FOR COURT USE ONLY N.H. INSURANCE DEPARTMENT
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Francisco STREET ADDRESS: 400 McAllister Street MAILING ADDRESS: CITY AND ZIP CODE: San Francisco, CA 94102 BRANCH NAME:		
PLAINTIFF/PETITIONER: WESTERN ASBESTOS SETTLEMENT TRUST, et al. DEFENDANT/RESPONDENT: ZURICH-AMERICAN INSURANCE COMPANY, et al.		
DEPOSITION SUBPOENA FOR PRODUCTION OF BUSINESS RECORDS		CASE NUMBER: CGC-04-436181

THE PEOPLE OF THE STATE OF CALIFORNIA, TO (name, address, and telephone number of deponent, if known):
 The Home Insurance Company in Liquidation, Roger A. Sevigny, Insurance Commissioner of the State of New Hampshire, 56 Suncook Road, Concord, New Hampshire 03301

1. YOU ARE ORDERED TO PRODUCE THE BUSINESS RECORDS described in item 3, as follows:

To (name of deposition officer): Jeffrey W. Moss, Esq. On (date): April 13, 2006 At (time): 10:00 AM Location (address): Morgan, Lewis & Bockius LLP, 225 Franklin Street, Suite 1705, Boston, MA 02110
Do not release the requested records to the deposition officer prior to the date and time stated above.

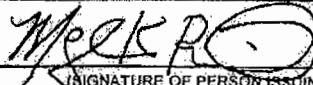
- a. by delivering a true, legible, and durable copy of the business records described in item 3, enclosed in a sealed inner wrapper with the title and number of the action, name of witness, and date of subpoena clearly written on it. The inner wrapper shall then be enclosed in an outer envelope or wrapper, sealed, and mailed to the deposition officer at the address in item 1.
 - b. by delivering a true, legible, and durable copy of the business records described in item 3 to the deposition officer at the witness's address, on receipt of payment in cash or by check of the reasonable costs of preparing the copy, as determined under Evidence Code section 1563(b).
 - c. by making the original business records described in item 3 available for inspection at your business address by the attorney's representative and permitting copying at your business address under reasonable conditions during normal business hours.
2. The records are to be produced by the date and time shown in item 1 (but not sooner than 20 days after the issuance of the deposition subpoena, or 15 days after service, whichever date is later). Reasonable costs of locating records, making them available or copying them, and postage, if any, are recoverable as set forth in Evidence Code section 1563(b). The records shall be accompanied by an affidavit of the custodian or other qualified witness pursuant to Evidence Code section 1561.
3. The records to be produced are described as follows: Please see Attachment A.

Continued on Attachment 3.

4. IF YOU HAVE BEEN SERVED WITH THIS SUBPOENA AS A CUSTODIAN OF CONSUMER OR EMPLOYEE RECORDS UNDER CODE OF CIVIL PROCEDURE SECTION 1985.3 OR 1985.6 AND A MOTION TO QUASH OR AN OBJECTION HAS BEEN SERVED ON YOU, A COURT ORDER OR AGREEMENT OF THE PARTIES, WITNESSES, AND CONSUMER OR EMPLOYEE AFFECTED MUST BE OBTAINED BEFORE YOU ARE REQUIRED TO PRODUCE CONSUMER OR EMPLOYEE RECORDS.

DISOBEDIENCE OF THIS SUBPOENA MAY BE PUNISHED AS CONTEMPT BY THIS COURT. YOU WILL ALSO BE LIABLE FOR THE SUM OF FIVE HUNDRED DOLLARS AND ALL DAMAGES RESULTING FROM YOUR FAILURE TO OBEY.

Date issued: March 2, 2006
 Megan K. Rosichan
 (TYPE OR PRINT NAME)


 (SIGNATURE OF PERSON ISSUING SUBPOENA)
 Attorneys for Plaintiffs
 (TITLE)

(Proof of service on reverse)

EXHIBIT A

**DOCUMENTS REQUESTED FOR PRODUCTION BY THE HOME INSURANCE
COMPANY IN LIQUIDATION**

1. All DOCUMENTS (The term "DOCUMENTS" shall refer to the original, or where the original is not within your control or custody a the duplicate, of any writing, including all drafts and copies bearing notations, marks or matters not found on the original and/or duplicate. The term also includes any information contained on microfilm or in computers, computer disks, tapes, or otherwise stored electronically. The term includes all attachments and enclosures to any document) relating to budget information for HOME HOLDINGS INC. and its affiliates (collectively "HOME") for the period 1985-1998.
2. All DOCUMENTS of those HOME employees who worked on the recapitalization (e.g. HOME Transition Team Managers) for the period 1990-1996.
3. All DOCUMENTS from 1990 to present regarding internal operational and management reports.
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5. All DOCUMENTS from 1995 to present that refer or relate to any payments made by ZURICH (The term "ZURICH" refers to any Zurich Insurance Company affiliate, subsidiary or related entity, including but not limited to, Zurich Insurance Company, Zurich Centre Investments Limited, Insurance Partners Advisors, L.P., ZCI Investments Limited, Zurich Insurance Company, US Branch, Zurich-American Insurance Company, Zurich American Insurance Company of Illinois, Steadfast Insurance Company, and/or Risk Enterprise Management Limited) to HOME pursuant to the Renewal Rights Agreement.
6. All DOCUMENTS from 1985 to present regarding HOME'S monthly and annual financial reports.
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9. All DOCUMENTS from 1994 to present that refer or relate to the Aggregate Excess of Loss Reinsurance Agreement, dated June 12, 1995.
10. All DOCUMENTS from 1994 to present that refer or relate to any payments made by ZURICH to HOME pursuant to the Aggregate Excess of Loss Reinsurance Agreement.
11. All DOCUMENTS from 1994 to present that refer or relate to the Facultative Reinsurance Facility Agreement, dated December 24, 1994.
12. All DOCUMENTS from 1994 to present that refer or relate to any amendment to the Facultative Reinsurance Facility Agreement.
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22. All DOCUMENTS from 1994 to present that refer or relate to any response by ZURICH to any request for information by the New Hampshire Insurance Department regarding any amendment to the Facultative Reinsurance Facility Agreement.
23. All DOCUMENTS from 1994 to present that refer or relate to any request for information by the New Hampshire Insurance Department to HOME regarding any amendment to the Facultative Reinsurance Facility Agreement.
24. All DOCUMENTS from 1994 to present that refer or relate to any response by HOME to the request for information by the New Hampshire Insurance Department regarding any amendment to the Facultative Reinsurance Facility Agreement.
25. All DOCUMENTS from 1995 to 1998 that refer or relate to communications from HOME to HOME policyholders regarding HOME's recapitalization and possible renewal of policies by ZURICH.
26. All DOCUMENTS from 1990 to present that refer or relate to ZURICH proposals or attempts to acquire HOME's business.
27. All DOCUMENTS from 1990 to present that refer or relate to the recapitalization of HOME.
28. All DOCUMENTS from 1995 to present that refer or relate to any compensation ZURICH paid for HOME's insurance business.
29. All DOCUMENTS from 1990 to present that refer or relate to all ZURICH reinsurance contracts.
30. All DOCUMENTS from 1990 to present that refer or relate to information regarding HOME's premiums earned and claims paid before and after the recapitalization.
31. All DOCUMENTS from 1990 to present that refer or relate to information regarding HOME's management and/or reporting structure and employees before and after the recapitalization.

32. All DOCUMENTS from 1990 to present that refer or relate to any payments made by HOME to ZURICH.
33. All DOCUMENTS from 1990 to present that refer or relate to any payments made by ZURICH to HOME.
34. All DOCUMENTS from 1985 to present that refer or relate to HOME's investment portfolio.
35. All DOCUMENTS from 1994 to present that refer or relate to the Portfolio Value Swap Agreement dated June 12, 1995.
36. All DOCUMENTS from 1994 to present that refer or relate to any payments made to HOME under the Portfolio Value Swap Agreement dated June 12, 1995.
37. All DOCUMENTS from 1994 to present that refer or relate to any earnings or profits made by ZURICH under the Portfolio Value Swap Agreement dated June 12, 1995.
38. All DOCUMENTS from 1994 to present that refer or relate to the Services Agreement, dated June 12, 1995 among Risk Enterprise Management Limited, Zurich Centre Investments Limited, Home Holdings, Inc., The Home Insurance Company, U.S. International Reinsurance Company, The Home Insurance Company of Illinois and The Home Insurance Company of Wisconsin.
39. All DOCUMENTS from 1994 to present that relate or refer to the Securityholders' Agreement, dated June 12, 1995, among Home Holdings, Inc., ZCI Investments Limited, Centre Reinsurance (Bermuda Limited, Insurance Partners Advisors L.P., and Trygg-Hansa AB.
40. All DOCUMENTS from 1994 to present that refer or relate to the "Stop-Loss Reinsurance Treaty" as referenced in Change No. 2 Form A of the Statement Regarding the Acquisition of Control of or Merger With a Domestic insurer, dated May 16, 1995.
41. All DOCUMENTS from 1994 to present that refer or relate to payments made by HOME or the liquidator to any plaintiff for claims asserted under the policies identified in Exhibit 1.
42. All DOCUMENTS comprising individual policy, underwriting and claims files for each policy identified in Exhibit 1.
43. All DOCUMENTS that refer or relate to communications between HOME and the PLAINTIFFS (The term "PLAINTIFFS" shall refer to Western Asbestos Settlement Trust, Western Mac Arthur Company, Mac Arthur Company, and Western Asbestos Company) regarding claims for coverage under the policies identified in Exhibit 1, including but not limited to notice letters, reservation of rights letters, and coverage determination letters.
44. All DOCUMENTS that refer or relate to defense, indemnification, settlement or other payments made by HOME under the policies identified in Exhibit 1.
45. All DOCUMENTS that refer or relate to settlement and or release agreements that refer or relate to the policies identified in Exhibit 1.
46. All DOCUMENTS that refer or relate to proofs of claim and other submissions made by the PLAINTIFFS to HOME's liquidator under the policies identified in Exhibit 1.
47. Documents that refer or relate to communications between the PLAINTIFFS and HOME's liquidator, regarding claims submitted to the liquidator under the policies identified in Exhibit 1.

Exhibit 1: Policies Issued by HOME to PLAINTIFFS

Policies Issued to Western Mac Arthur and Mac Arthur:

POLICY NUMBER	POLICY PERIOD
GA 9252630	1/1/76 to 1/1/77
GA 9376891	1/1/77 to 1/1/78
GA 9559685	1/1/78 to 1/1/79
GA 9710995	1/1/79 to 1/1/80
GA 9987581	1/1/80 to 1/1/81
GA 9993335	1/1/81 to 1/1/82
GA 1245816	1/1/82 to 1/1/83

PLAINTIFF/PETITIONER: WESTERN ASBESTOS SETTLEMENT TRUST,
et al.
DEFENDANT/RESPONDENT: ZURICH-AMERICAN INSURANCE COMPANY, et al.

CASE NUMBER:
CGC-04-436181

**PROOF OF SERVICE OF DEPOSITION SUBPOENA FOR
PRODUCTION OF BUSINESS RECORDS**

1. I served this *Deposition Subpoena for Production of Business Records* by personally delivering a copy to the person served as follows:

a. Person served (*name*):

b. Address where served:

c. Date of delivery:

d. Time of delivery:

e. (1) Witness fees were paid.
Amount: \$ 0.00

(2) Copying fees were paid.
Amount: \$ 0.00

f. Fee for service: \$ 0.00

2. I received this subpoena for service on (*date*):

3. Person serving:

- a. Not a registered California process server.
- b. California sheriff or marshal.
- c. Registered California process server.
- d. Employee or independent contractor of a registered California process server.
- e. Exempt from registration under Business and Professions Code section 22350(b).
- f. Registered professional photocopier.
- g. Exempt from registration under Business and Professions Code section 22451.
- h. Name, address, telephone number, and, if applicable, county of registration and number:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(For California sheriff or marshal use only)
I certify that the foregoing is true and correct.

Date:

▶ _____
(SIGNATURE)

▶ _____
(SIGNATURE)

1 MORGAN, LEWIS & BOCKIUS LLP
Paul Anton Zevnik, State Bar No. 73343
2 Michel Y. Horton, State Bar No. 114243
Jeffrey S. Raskin, State Bar No. 169096
3 Dawn S. Pittman, State Bar No. 177962
Megan K. Rosichan, State Bar No. 238561
4 One Market, Spear Street Tower
San Francisco, California 94105
5 Telephone: 415.442.1000
Facsimile: 415.442.1001
6

Attorneys for Plaintiffs
7 *Western Asbestos Settlement Trust, Western Mac*
Arthur Co., Mac Arthur Co. and Western Asbestos
8 *Company*

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SAN FRANCISCO

11 WESTERN ASBESTOS SETTLEMENT
12 TRUST, WESTERN MAC ARTHUR
COMPANY, MAC ARTHUR COMPANY,
13 and WESTERN ASBESTOS COMPANY,

14 *Plaintiffs,*

15 vs.

16 ZURICH-AMERICAN INSURANCE
COMPANY, individually and as successor
17 to Zurich Insurance Company, ZURICH-
AMERICAN INSURANCE COMPANY
18 OF ILLINOIS, STEADFAST INSURANCE
COMPANY, CALIFORNIA INSURANCE
19 GUARANTEE ASSOCIATION,
EMPLOYERS REINSURANCE
20 CORPORATION, CONTINENTAL
CASUALTY COMPANY, DOES 1 through
21 50, inclusive,

22 *Defendants.*

Case No. GCG-04-436181

**COMMISSION TO REQUIRE
PRODUCTION AND INSPECTION OF
DOCUMENTS AND THINGS FROM
THE HOME INSURANCE COMPANY
IN LIQUIDATION**

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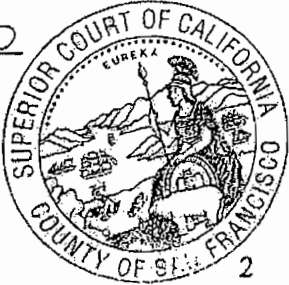
THE PEOPLE OF THE STATE OF CALIFORNIA TO:

THE COURTS OF THE STATE OF NEW HAMPSHIRE AND TO A CERTIFIED COURT REPORTER OF THE STATE OF NEW HAMPSHIRE OR OTHER PERSON AUTHORIZED BY LAW TO ADMINISTER OATHS AND RECORD TESTIMONY

WHEREAS, it appears to the Superior Court of the State of California, County of San Francisco, on a showing of good cause by the parties in the above-entitled action, that The Home Insurance Company In Liquidation possesses documents and/or things that are material to the action currently pending before this Court between Plaintiffs Western Asbestos Settlement Trust, Western Mac Arthur Company, Mac Arthur Company, and Western Asbestos Company, and Defendants Zurich American Insurance Company, Zurich American Insurance Company of Illinois, and Steadfast Insurance Company. The documents and things requested can now be produced and inspected in Merrimack County, State of New Hampshire, and you are hereby authorized and empowered to issue subpoena(s) for the production and inspection of documents and things.

You are authorized and empowered, at the times and places noticed by counsel, to require the production of documents and things produced pursuant to the duly issued subpoena(s), along with this commission, in a sealed envelope(s) with the title of the action marked "Request for Production of Documents and Things from The Home Insurance Company In Liquidation" by certified mail to Dawn S. Pittman, Esq., Morgan, Lewis & Bockius LLP, One Market, Spear Tower, San Francisco, California, 94105, as counsel for plaintiffs, and to Albert P. Bedecarre, Quinn Emanuel Urquhart Oliver & Hedges, LLP, 50 California Street, 22nd Floor, San Francisco, California, 94111, as counsel for defendants. The dates, times and locations for the production and inspection of the documents and things may be changed upon agreement of the parties.

Dated: 2/24/06



[Handwritten Signature]

Judge of the Superior Court

MERRIMACK COUNTY SHERIFF'S OFFICE

163 North Main St.
Concord, NH 03301
Phone: 603-225-5583

RECEIVED

MAR 09 2006

N.H. INSURANCE DEPARTMENT

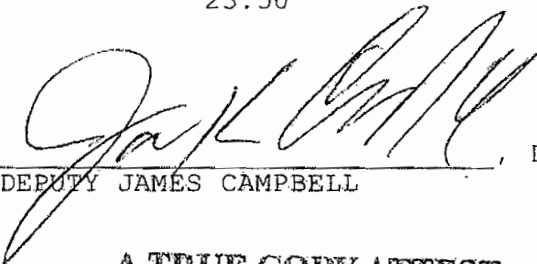
HOME INSURANCE COMPANY IN LIQUIDATION
UNKNOWN
UNKNOWN, NH

MERRIMACK, SS

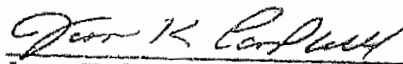
DATE: MARCH 9, 2006

I, DEPUTY JAMES CAMPBELL, this day at ^{1045 AM}, summoned the within named defendant THE HOME INSURANCE COMPANY IN LIQUIDATION, by leaving at the office of Roger Sevigny, Insurance Commissioner for the State of New Hampshire its true and lawful attorney for the service of process under and by virtue of Chapter 405-10 NH RSA as amended, two true and attested copies of this Subpeona and I paid said Commissioner for the State twenty-five (\$25.00) dollars as their fee for accepting service.

FEEs:	
Service:	15.00
Misc:	
PD NH INSURANCE COMMISSIONER	25.00
Postage	1.00
Travel	2.50
Notary	5.00
Total:	23.50


_____, Deputy Sheriff
DEPUTY JAMES CAMPBELL

A TRUE COPY ATTEST:



James K. Campbell, Deputy Sheriff

MAR 09 2006

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Jeffrey S. Raskin (State Bar No. 169096) Megan K. Rosichan (State Bar No. 238561) MORGAN LEWIS & BOCKIUS LLP One Market, Spear Tower San Francisco, CA 94105-1126 TELEPHONE NO.: 415 442-1000 FAX NO. (Optional): 415 442-1001 E-MAIL ADDRESS (Optional): jraskin@morganlewis.com ATTORNEY FOR (Name): Plaintiffs	FOR COURT USE ONLY N.H. INSURANCE DEPARTMENT CC: Ins. Dept
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO STREET ADDRESS: 400 McAllister Street MAILING ADDRESS: CITY AND ZIP CODE: San Francisco, CA 94102 BRANCH NAME:	
PLAINTIFF/ PETITIONER: PEPSIAMERICAS, INC., et al. DEFENDANT/ RESPONDENT: ZURICH-AMERICAN INSURANCE COMPANY, et al.	
DEPOSITION SUBPOENA FOR PRODUCTION OF BUSINESS RECORDS	CASE NUMBER: CGC-05-442140

THE PEOPLE OF THE STATE OF CALIFORNIA, TO (name, address, and telephone number of deponent, if known):
 The Home Insurance Company in Liquidation, Roger A. Sevigny, Insurance Commissioner of the State of New Hampshire, 56 Suncook Road, Concord, New Hampshire 03301

1. YOU ARE ORDERED TO PRODUCE THE BUSINESS RECORDS described in item 3, as follows:

To (name of deposition officer): Jeffrey W. Moss, Esq. On (date): April 13, 2006 At (time): 10:00 AM Location (address): Morgan, Lewis & Bockius LLP, 225 Franklin Street, Suite 1705, Boston, MA 02110
Do not release the requested records to the deposition officer prior to the date and time stated above.


- a. by delivering a true, legible, and durable copy of the business records described in item 3, enclosed in a sealed inner wrapper with the title and number of the action, name of witness, and date of subpoena clearly written on it. The inner wrapper shall then be enclosed in an outer envelope or wrapper, sealed, and mailed to the deposition officer at the address in item 1.
 - b. by delivering a true, legible, and durable copy of the business records described in item 3 to the deposition officer at the witness's address, on receipt of payment in cash or by check of the reasonable costs of preparing the copy, as determined under Evidence Code section 1563(b).
 - c. by making the original business records described in item 3 available for inspection at your business address by the attorney's representative and permitting copying at your business address under reasonable conditions during normal business hours.
2. The records are to be produced by the date and time shown in item 1 (but not sooner than 20 days after the issuance of the deposition subpoena, or 15 days after service, whichever date is later). Reasonable costs of locating records, making them available or copying them, and postage, if any, are recoverable as set forth in Evidence Code section 1563(b). The records shall be accompanied by an affidavit of the custodian or other qualified witness pursuant to Evidence Code section 1561.
3. The records to be produced are described as follows: Please see Attachment A.

Continued on Attachment 3.

4. IF YOU HAVE BEEN SERVED WITH THIS SUBPOENA AS A CUSTODIAN OF CONSUMER OR EMPLOYEE RECORDS UNDER CODE OF CIVIL PROCEDURE SECTION 1985.3 OR 1985.6 AND A MOTION TO QUASH OR AN OBJECTION HAS BEEN SERVED ON YOU, A COURT ORDER OR AGREEMENT OF THE PARTIES, WITNESSES, AND CONSUMER OR EMPLOYEE AFFECTED MUST BE OBTAINED BEFORE YOU ARE REQUIRED TO PRODUCE CONSUMER OR EMPLOYEE RECORDS.

DISOBEDIENCE OF THIS SUBPOENA MAY BE PUNISHED AS CONTEMPT BY THIS COURT. YOU WILL ALSO BE LIABLE FOR THE SUM OF FIVE HUNDRED DOLLARS AND ALL DAMAGES RESULTING FROM YOUR FAILURE TO OBEY.

Date issued: March 2, 2006
 Megan K. Rosichan
 (TYPE OR PRINT NAME)


 (SIGNATURE OF PERSON ISSUING SUBPOENA)
 Attorneys for Plaintiffs
 (TITLE)

(Proof of service on reverse)

EXHIBIT A

**DOCUMENTS REQUESTED FOR PRODUCTION BY THE HOME INSURANCE
COMPANY IN LIQUIDATION**

1. All DOCUMENTS (The term "DOCUMENTS" shall refer to the original, or where the original is not within your control or custody a the duplicate, of any writing, including all drafts and copies bearing notations, marks or matters not found on the original and/or duplicate. The term also includes any information contained on microfilm or in computers, computer disks, tapes, or otherwise stored electronically. The term includes all attachments and enclosures to any document) relating to budget information for HOME HOLDINGS INC. and its affiliates (collectively "HOME") for the period 1985-1998.
2. All DOCUMENTS of those HOME employees who worked on the recapitalization (e.g. HOME Transition Team Managers) for the period 1990-1996.
3. All DOCUMENTS from 1990 to present regarding internal operational and management reports.
4. All DOCUMENTS from 1994 to present regarding the Renewal Rights Agreement, dated June 12, 1995.
5. All DOCUMENTS from 1995 to present that refer or relate to any payments made by ZURICH (The term "ZURICH" refers to any Zurich Insurance Company affiliate, subsidiary or related entity, including but not limited to, Zurich Insurance Company, Zurich Centre Investments Limited, Insurance Partners Advisors, L.P., ZCI Investments Limited, Zurich Insurance Company, US Branch, Zurich-American Insurance Company, Zurich American Insurance Company of Illinois, Steadfast Insurance Company, and/or Risk Enterprise Management Limited) to HOME pursuant to the Renewal Rights Agreement.
6. All DOCUMENTS from 1985 to present regarding HOME'S monthly and annual financial reports.
7. All DOCUMENTS from 1985 to present that refer or relate to HOME's quarterly Schedule P documents.
8. All DOCUMENTS that refer or relate to HOME's financial status from 1985 to present.
9. All DOCUMENTS from 1994 to present that refer or relate to the Aggregate Excess of Loss Reinsurance Agreement, dated June 12, 1995.
10. All DOCUMENTS from 1994 to present that refer or relate to any payments made by ZURICH to HOME pursuant to the Aggregate Excess of Loss Reinsurance Agreement.
11. All DOCUMENTS from 1994 to present that refer or relate to the Facultative Reinsurance Facility Agreement, dated December 24, 1994.
12. All DOCUMENTS from 1994 to present that refer or relate to any amendment to the Facultative Reinsurance Facility Agreement.
13. All DOCUMENTS from 1994 to present that refer or relate to any payments made by ZURICH to HOME pursuant to the Facultative Reinsurance Facility Agreement.
14. All DOCUMENTS from 1994 to present that refer or relate to any payments made by ZURICH to HOME pursuant to any amendment to the Facultative Reinsurance Facility Agreement.

15. All DOCUMENTS from 1994 to present that refer or relate to any payments made by HOME to ZURICH pursuant to the Facultative Reinsurance Facility Agreement.
16. All DOCUMENTS from 1994 to present that refer or relate to any payments made by HOME to ZURICH pursuant to any amendment to the Facultative Reinsurance Facility Agreement.
17. All DOCUMENTS from 1994 to present that refer or relate to any request for information by the New Hampshire Insurance Department to ZURICH regarding the Facultative Reinsurance Facility Agreement.
18. All DOCUMENTS from 1995 to present that refer or relate to any response to the request for information by the New Hampshire Insurance Department to ZURICH regarding the Fronting Amendment.
19. All DOCUMENTS from 1994 to present that refer or relate to any request for information by the New Hampshire Insurance Department to HOME regarding the Facultative Reinsurance Facility Agreement.
20. All DOCUMENTS from 1994 to present that refer or relate to any response by HOME to any request for information by the New Hampshire Insurance Department regarding the Facultative Reinsurance Facility Agreement.
21. All DOCUMENTS from 1994 to present that refer or relate to any request for information by the New Hampshire Insurance Department to ZURICH regarding any amendment to the Facultative Reinsurance Facility Agreement.
22. All DOCUMENTS from 1994 to present that refer or relate to any response by ZURICH to any request for information by the New Hampshire Insurance Department regarding any amendment to the Facultative Reinsurance Facility Agreement.
23. All DOCUMENTS from 1994 to present that refer or relate to any request for information by the New Hampshire Insurance Department to HOME regarding any amendment to the Facultative Reinsurance Facility Agreement.
24. All DOCUMENTS from 1994 to present that refer or relate to any response by HOME to the request for information by the New Hampshire Insurance Department regarding any amendment to the Facultative Reinsurance Facility Agreement.
25. All DOCUMENTS from 1995 to 1998 that refer or relate to communications from HOME to HOME policyholders regarding HOME's recapitalization and possible renewal of policies by ZURICH.
26. All DOCUMENTS from 1990 to present that refer or relate to ZURICH proposals or attempts to acquire HOME's business.
27. All DOCUMENTS from 1990 to present that refer or relate to the recapitalization of HOME.
28. All DOCUMENTS from 1995 to present that refer or relate to any compensation ZURICH paid for HOME's insurance business.
29. All DOCUMENTS from 1990 to present that refer or relate to all ZURICH reinsurance contracts.
30. All DOCUMENTS from 1990 to present that refer or relate to information regarding HOME's premiums earned and claims paid before and after the recapitalization.
31. All DOCUMENTS from 1990 to present that refer or relate to information regarding HOME's management and/or reporting structure and employees before and after the recapitalization.

32. All DOCUMENTS from 1990 to present that refer or relate to any payments made by HOME to ZURICH.
33. All DOCUMENTS from 1990 to present that refer or relate to any payments made by ZURICH to HOME.
34. All DOCUMENTS from 1985 to present that refer or relate to HOME's investment portfolio.
35. All DOCUMENTS from 1994 to present that refer or relate to the Portfolio Value Swap Agreement dated June 12, 1995.
36. All DOCUMENTS from 1994 to present that refer or relate to any payments made to HOME under the Portfolio Value Swap Agreement dated June 12, 1995.
37. All DOCUMENTS from 1994 to present that refer or relate to any earnings or profits made by ZURICH under the Portfolio Value Swap Agreement dated June 12, 1995.
38. All DOCUMENTS from 1994 to present that refer or relate to the Services Agreement, dated June 12, 1995 among Risk Enterprise Management Limited, Zurich Centre Investments Limited, Home Holdings, Inc., The Home Insurance Company, U.S. International Reinsurance Company, The Home Insurance Company of Illinois and The Home Insurance Company of Wisconsin.
39. All DOCUMENTS from 1994 to present that relate or refer to the Securityholders' Agreement, dated June 12, 1995, among Home Holdings, Inc., ZCI Investments Limited, Centre Reinsurance (Bermuda Limited, Insurance Partners Advisors L.P., and Trygg-Hansa AB.
40. All DOCUMENTS from 1994 to present that refer or relate to the "Stop-Loss Reinsurance Treaty" as referenced in Change No. 2 Form A of the Statement Regarding the Acquisition of Control of or Merger With a Domestic insurer, dated May 16, 1995.
41. All DOCUMENTS from 1994 to present that refer or relate to payments made by HOME or the liquidator to any plaintiff for claims asserted under the policies identified in Exhibit 1.
42. All DOCUMENTS comprising individual policy, underwriting and claims files for each policy identified in Exhibit 1.
43. All DOCUMENTS that refer or relate to communications between HOME and the PLAINTIFFS (The term "PLAINTIFFS" shall refer to PepsiAmericas, Inc., Southern Natural Gas Company, El Paso Production Company, Petro-Tex Chemical Corporation Dissolution, Distribution, Liquidating and Recovery Trust, and Tennessee Gas Pipeline Company) regarding claims for coverage under the policies identified in Exhibit 1, including but not limited to notice letters, reservation of rights letters, and coverage determination letters.
44. All DOCUMENTS that refer or relate to defense, indemnification, settlement or other payments made by HOME under the policies identified in Exhibit 1.
45. All DOCUMENTS that refer or relate to settlement and or release agreements that refer or relate to the policies identified in Exhibit 1.
46. All DOCUMENTS that refer or relate to proofs of claim and other submissions made by the PLAINTIFFS to HOME's liquidator under the policies identified in Exhibit 1.
47. Documents that refer or relate to communications between the PLAINTIFFS and HOME's liquidator, regarding claims submitted to the liquidator under the policies identified in Exhibit 1.

Exhibit 1: Policies Issued by HOME to PLAINTIFFS

Policies Issued to PepsiAmericas, Inc.

<u>Policy Number</u>	<u>Policy Period</u>
HEC 9543154	8/1/62-8/1/65
HEC 954409	8/1/65-8/1/68
HEC 9646167	8/1/68-8/1/71
HEC 4973214	12/1/74-12/1/77

Policies Issued to Southern Natural Gas Company

<u>Policy Number</u>	<u>Policy Period</u>
HEC 4356812	3/5/73-3/5/76
HEC 9920147	7/25/71-11/1/71
HEC 4165779	7/25/71-12/31/72
HEC 4356692	12/31/72-1/30/76
GA 996428	9/1/77-12/31/78
GA 996428	12/31/78-9/1/80
GL 1131093	9/1/80-9/1/83
GL 1432864	9/1/83-12/31/84
GL 988595	12/31/84-11/1/85
GL 988636	11/1/85-12/1/86
GL 988671	12/1/86-12/1/87

Policies Issued to El Paso Production Company

<u>Policy Number</u>	<u>Policy Period</u>
HEC 4356812	3/5/73-3/5/76
HEC 9920147	7/25/71-11/1/71
HEC 4165779	7/25/71-12/31/72
HEC 4356692	12/31/72-1/30/76
GA 996428	9/1/77-12/31/78
GA 996428	12/31/78-9/1/80
GL 1131093	9/1/80-9/1/83
GL 1432864	9/1/83-12/31/84
GL 988595	12/31/84-11/1/85
GL 988636	11/1/85-12/1/86
GL 988671	12/1/86-12/1/87

Policies Issued to Petro-Tex Chemical Corporation Dissolution, Distribution, Liquidating and Recovery Trust

<u>Policy Number</u>	<u>Policy Period</u>
HEC 9304824	9/6/68-7/1/72
HEC 4356394	7/1/72-7/1/75
HEC 9558751	1/31/68-1/31/71
HEC 9919651	1/31/71-9/1/73
HEC 9919654	1/31/71-9/1/73
HEC 9919654	1/31/71-12/31/73
HEC 4495308	9/1/73-9/1/76
HEC 4495328	12/31/73-9/1/76
HEC 9007457	9/1/76-9/1/77

Policies Issued to Tennessee Gas Pipeline Company

<u>Policy Number</u>	<u>Policy Period</u>
HEC 9558751	1/31/68-1/31/71
HEC 9919651	1/31/71-9/1/73
HEC 9919654	1/31/71-9/1/73
HEC 9919654	1/31/71-12/31/73
HEC 4495308	9/1/73-9/1/76
HEC 4495328	12/31/73-9/1/76
HEC 9007457	9/1/76-9/1/77

PLAINTIFF/PETITIONER: PEPSIAMERICAS, INC., et al.	CASE NUMBER: CGC-05-442140
DEFENDANT/RESPONDENT: ZURICH-AMERICAN INSURANCE COMPANY, ET AL.	

**PROOF OF SERVICE OF DEPOSITION SUBPOENA FOR
PRODUCTION OF BUSINESS RECORDS**

1. I served this *Deposition Subpoena for Production of Business Records* by personally delivering a copy to the person served as follows:

a. Person served (name):

b. Address where served:

c. Date of delivery:

d. Time of delivery:

e. (1) Witness fees were paid.
Amount: \$ 0.00

(2) Copying fees were paid.
Amount: \$ 0.00

f. Fee for service: \$ 0.00

2. I received this subpoena for service on (date):

3. Person serving:

- a. Not a registered California process server.
- b. California sheriff or marshal.
- c. Registered California process server.
- d. Employee or independent contractor of a registered California process server.
- e. Exempt from registration under Business and Professions Code section 22350(b).
- f. Registered professional photocopier.
- g. Exempt from registration under Business and Professions Code section 22451.
- h. Name, address, telephone number, and, if applicable, county of registration and number:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(For California sheriff or marshal use only)

I certify that the foregoing is true and correct.

Date:

(SIGNATURE)

(SIGNATURE)

1 MORGAN, LEWIS & BOCKIUS LLP
Paul Anton Zevnik, State Bar No. 75343
2 Michel Y. Horton, State Bar No. 114243
Jeffrey S. Raskin, State Bar No. 169096
3 Dawn S. Pittman, State Bar No. 177962
Megan K. Rosichan, State Bar No. 238561
4 One Market, Spear Street Tower
San Francisco, California 94105
5 Telephone: 415.442.1000
Facsimile: 415.442.1001

6 *Attorneys for Plaintiffs*

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN FRANCISCO

10 PEPSIAMERICAS, INC.; SOUTHERN
11 NATURAL GAS COMPANY; EI PASO
PRODUCTION COMPANY, PETRO-TEX
12 CHEMICAL CORPORATION
DISSOLUTION, DISTRIBUTION,
13 LIQUIDATING, AND RECOVERY TRUST;
TENNESSEE GAS PIPELINE COMPANY,
14 and ROES 1-200,

15 *Plaintiffs,*

16 vs.

17 ZURICH-AMERICAN INSURANCE
COMPANY, individually and as successor
18 to Zurich Insurance Company; ZURICH
AMERICAN INSURANCE COMPANY
19 OF ILLINOIS; STEADFAST INSURANCE
COMPANY, and DOES 1-200,

20 *Defendants.*

Case No. CGC-05-442140

**COMMISSION TO REQUIRE
PRODUCTION AND INSPECTION OF
DOCUMENTS AND THINGS FROM
THE HOME INSURANCE COMPANY
IN LIQUIDATION**

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THE PEOPLE OF THE STATE OF CALIFORNIA TO:

THE COURTS OF THE STATE OF NEW HAMPSHIRE AND TO A CERTIFIED COURT REPORTER OF THE STATE OF NEW HAMPSHIRE OR OTHER PERSON AUTHORIZED BY LAW TO ADMINISTER OATHS AND RECORD TESTIMONY

WHEREAS, it appears to the Superior Court of the State of California, County of San Francisco, on a showing of good cause by the parties in the above-entitled action, that The Home Insurance Company In Liquidation possesses documents and/or things that are material to the action currently pending before this Court between Plaintiffs PepsiAmericas, Inc., Southern Natural Gas Company, El Paso Production Company, Petro-Tex Chemical Corporation Dissolution, Distribution, Liquidating and Recovery Trust, and Tennessee Gas Pipeline Company, and Defendants Zurich American Insurance Company, Zurich American Insurance Company of Illinois, and Steadfast Insurance Company. The documents and things requested can now be produced and inspected in Merrimack County, State of New Hampshire, and you are hereby authorized and empowered to issue subpoena(s) for the production and inspection of documents and things.

You are authorized and empowered, at the times and places noticed by counsel, to require the production of documents and things produced pursuant to the duly issued subpoena(s), along with this commission, in a sealed envelope(s) with the title of the action marked "Request for Production of Documents and Things from The Home Insurance Company In Liquidation" by certified mail to Dawn S. Pittman, Esq., Morgan, Lewis & Bockius LLP, One Market, Spear Tower, San Francisco, California, 94105, as counsel for plaintiffs, and to Albert P. Bedecarre, Quinn Emanuel Urquhart Oliver & Hedges, LLP, 50 California Street, 22nd Floor, San Francisco, California, 94111, as counsel for defendants. The dates, times and locations for the production and inspection of the documents and things may be changed upon agreement of the parties.

Dated: 2/24/06



[Handwritten Signature]

Judge of the Superior Court

MERRIMACK COUNTY SHERIFF'S OFFICE

163 North Main St.
Concord, NH 03301
Phone: 603-225-5683

RECEIVED

MAR 09 2006

HOME INSURANCE COMPANY IN LIQUIDATION
UNKNOWN
UNKNOWN, NH

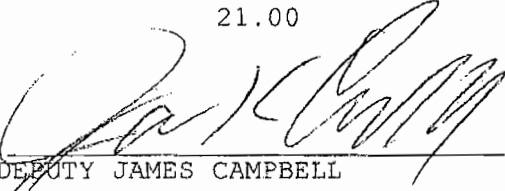
N.H. INSURANCE DEPARTMENT

MERRIMACK, SS

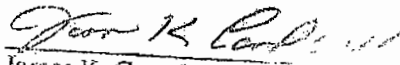
DATE: MARCH 9, 2006

I, DEPUTY JAMES CAMPBELL, this day at 1045^{AM}, summoned the within named defendant THE HOME INSURANCE COMPANY IN LIQUIDATION, by leaving at the office of Roger Sevigny, Insurance Commissioner for the State of New Hampshire its true and lawful attorney for the service of process under and by virtue of Chapter 405-10 NH RSA as amended, two true and attested copies of this Subpeona and I paid said Commissioner for the State twenty-five (\$25.00) dollars as their fee for accepting service.

FEES:	
Service:	15.00
Misc:	
PD NH INSURANCE COMMISSIONER	25.00
Postage	1.00
Travel	0.00
Notary	5.00
Total:	21.00


 _____, Deputy Sheriff
 DEPUTY JAMES CAMPBELL

A TRUE COPY ATTEST


 James K. Campbell

RACKEMANN, SAWYER & BREWSTER

PROFESSIONAL CORPORATION
COUNSELLORS AT LAW
ESTABLISHED 1886

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BOSTON, MASSACHUSETTS 02111-2659
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ERIC A. SMITH
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November 11, 2005

BY FACSIMILE

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C. Guerry Collins, Esq.
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Re: Fuller-Austin Asbestos Settlement Trust v. Zurich-American Insurance Company and related cases: Potential New Hampshire subpoena

Dear Counsel:

I write on behalf of Roger A. Sevigny, Commissioner of Insurance of the State of New Hampshire, in his capacity as Liquidator ("Liquidator") of The Home Insurance Company ("Home") pursuant to the Order of Liquidation issued by the Superior Court for Merrimack County, New Hampshire ("New Hampshire Court"), on June 13, 2003. This letter will follow up on our October 12, 2005 call concerning the subpoena that has been requested by the parties to the Fuller-Austin case in a petition filed with the New Hampshire Court on September 23, 2005.

The requested subpoena seeks 48 categories of documents. The categories specify various time periods, many of which extend for numbers of years. As we discussed, a number of the categories are included within the 10 categories of documents that the Liquidator agreed to retain at the request of the plaintiffs represented by Morgan Lewis. (See my letter to David Weiss of Morgan Lewis dated June 20, 2005). The agreed time periods are generally much less than those now requested.

The Liquidator has identified several concerns about the requested subpoena. First, the subpoena is only from the plaintiffs in the Fuller-Austin case. I understand that there are at least three other cases involving similar issues pending before Judge Kramer in California. The Liquidator would like to address requests for documents arising out of those cases at one time,

Dawn Pittman, Esq.

Randy Branitsky, Esq.

C. Guerry Collins, Esq.

November 11, 2005

Page 2

and it appears that CIGA wants to be sure that the request encompasses coverage materials relating to the Western Asbestos case. During the call it was agreed that the parties to the California actions would provide the Liquidator with a list of all the plaintiffs in those actions. I understand that the parties are considering seeking a new commission from the California Court that would be the same in scope as the commission issued in Fuller-Austin except that it would apply to all plaintiffs. The Liquidator would have the same objections to the scope of such a commission, if it were presented to the New Hampshire Court as a basis for a subpoena, as to the presently requested subpoena.

Second, Home has been declared insolvent, and responding to the potential subpoena will take up the limited resources of the liquidation staff and impose costs that will reduce the amounts available for distribution to priority creditors. Responding will entail not only identifying and segregating documents (which are anticipated to be voluminous) through a reasonable search of Home's files but also reviewing them for privilege and other grounds for non-production. (The Home staff involved in the recapitalization included a number of attorneys, and Home also had outside counsel. The Home's files thus are expected to contain many privileged documents and must be reviewed with care.) In the circumstances, the subpoena is unduly burdensome. During the call, I asked whether the parties would be agreeable to paying the costs of responding to the subpoena. Counsel for plaintiffs and Zurich indicated they would discuss the issue with their clients. We are still trying to evaluate the potential cost of the review, but it would be helpful to know whether plaintiffs and Zurich are willing to consider the point or not.

Third, the requested subpoena is extremely broad both in subject matters and time periods covered. As framed, it is overly broad and unduly burdensome. During our call, the plaintiffs and Zurich indicated some flexibility with respect to the sequencing of production, but not with respect to the scope. With respect to sequencing, however, the parties differed on the documents that should be the subject of initial production: the plaintiffs wanted to begin with documents concerning Home's financial condition, while Zurich sought to focus first on coverage for the underlying claims. I understand that the discovery in the California actions will initially focus on "alter ego" issues. In addition, plaintiffs have filed proofs of claim with the Liquidator, and those proofs of claim will be the subject of determinations under N.H. RSA 402-C:45 and the Claims Procedures Order issued in the liquidation proceeding (as revised and restated on January 19, 2005). In these circumstances, the Liquidator proposes to defer issues concerning production of documents concerning the plaintiffs' claims for coverage under Home's policies. As they are related to pending proofs of claim, files concerning the plaintiffs' claims and the policies involved in those claims are being retained for use in the liquidation.

Dawn Pittman, Esq.

Randy Branitsky, Esq.

C. Guerry Collins, Esq.

November 11, 2005

Page 3

Fourth, the scope of requested production is incredibly broad. Request 8, for example, asks for "all documents that refer or relate to Home's financial status from 1985 to the present." During our call, the plaintiffs were not willing to narrow the time frames. Rather than debate each request, the Liquidator proposes to use the categories on the attached exhibit as the basis for a potential agreed production. In order to create a document that can be more easily used in the course of conducting a reasonable search, the attachment consolidates many of the requests into fewer categories. It also uses time frames that more reasonably relate to the 1995 transactions that appear to be the subject of the plaintiffs' complaint and end at the point when Home was placed in rehabilitation.

The requested production asks for documents regarding (i) information requests by the New Hampshire Insurance Department of Home and Zurich concerning the Facultative Reinsurance Facility Agreement and any amendment to that Agreement, and (ii) Home's and Zurich's responses to any such requests. Any such requests and responses would be confidential and not subject to subpoena. See RSA 400-A:37, IV-a(a) (and former RSA 400-A:37 IV(d)); RSA 401-B:7; RSA 404-F:8, I. In these circumstances, a search for such documents in Home's possession is unwarranted.

The requested production also seeks electronic records. The Home liquidation's computer system was created as a stand alone system during mid to late 2003. While various individuals may have such records from before that time, the review to identify any responsive records would be unduly burdensome. To the extent that Home has backup tapes from prior periods, identification of producible records would require restoring data to servers from tapes and then some form of manual review of the files on the restored servers, both to identify any responsive documents and to separate out documents regarding REM clients other than Home. Especially in the context of an insolvent non-party, the burden of attempting to identify responsive electronic records is unduly burdensome and unreasonable.

Please let me know whether (a) this potential subpoena, as supplemented by the names of the plaintiffs in the other consolidated California actions, represents the requests for documents from Home on behalf of all the parties to the California actions, (b) the parties requesting the production will agree to pay the Liquidator the cost of making the production, and (c) the parties will agree to a reasonable production in the scope set forth on the attachment and in this letter. Assuming that we can reach agreement on these issues, the Liquidator will seek to produce responsive documents within the agreed scope on a reasonable schedule that accommodates the other tasks of the liquidation staff.

RACKEMANN, SAWYER & BREWSTER

Dawn Pittman, Esq.

Randy Branitsky, Esq.

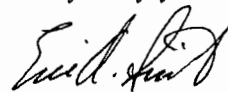
C. Guerry Collins, Esq.

November 11, 2005

Page 4

This letter is an effort by the Liquidator to reasonably address the issues raised by the requested subpoena by agreement. Additional issues may arise, and the Liquidator reserves all rights to object to the requested subpoena in the event these matters cannot be resolved amicably.

Very truly yours,

A handwritten signature in black ink, appearing to read "Eric A. Smith". The signature is written in a cursive style with a large, stylized initial "E".

Eric A. Smith

POTENTIAL AGREED SCOPE OF PRODUCTION – DISCUSSION DRAFT 11/11/05

- 1) Budgets for Home and its subsidiaries dated 1994 – 1998;
- 2) Documents dated 1994 – 1996 concerning Zurich’s recapitalization of Home as described in Zurich’s Form A application as amended;
- 3) Internal operational and management reports produced by Home’s executive management (management reporting directly to Home’s CEO) dated 1994 – 1998;
- 4) Documents dated 1994-February 2003 concerning the Renewal Rights Agreement dated June 12, 1995, including documents concerning payments thereunder. This does not include documents that might be found in individual insureds’ underwriting, policy or claim files;
- 5) Monthly and annual financial reports produced by Home’s executive management dated 1994 – 1998;
- 6) Home’s annual statements for years 1985 – 2002;
- 7) Documents dated 1994 – February 2003 concerning the Aggregate Excess of Loss Reinsurance Agreement dated June 12, 1995 (“AEOLA”), including documents concerning payments made thereunder;
- 8) Documents dated 1994 – February 2003 concerning the Facultative Reinsurance Agreement dated December 24, 1994, including documents concerning payments thereunder. This does not include documents that might be found in individual insureds’ underwriting, policy or claim files;
- 9) Documents dated 1994 – February 2003 concerning Amendment No. 1 to the Facultative Reinsurance Facility Agreement dated February 9, 1995 (the “Fronting Amendment”) or any other amendment to the Facultative Reinsurance Facility Agreement, including documents concerning payments thereunder. This does not include documents that might be found in individual insureds’ underwriting, policy or claim files;
- 10) Documents dated 1995 – 1998 concerning communications from Home to its policyholders regarding Home’s recapitalization by Zurich and possible renewal of policies by Zurich. This does not include documents that might be found in individual insureds’ underwriting, policy or claim files;
- 11) Documents dated 1990 – February 2003 concerning the Aggregate Excess of Loss Cover dated February 13, 1991, including documents concerning payments thereunder;
- 12) Documents dated 1994 – February 2003 concerning the Portfolio Value Swap Agreement dated June 12, 1995, including documents concerning payments thereunder;
- 13) Documents dated 1994 – February 2003 concerning the Services Agreement dated June 12, 1995
- 14) Documents dated 1994 – February 2003 concerning the Securityholders’ Agreement dated June 12, 1995

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FAX: 415.442.1001
eFax: 877.432.9652
www.morganlewis.com

Morgan Lewis
COUNSELORS AT LAW

RECEIVED
JAN 05 2006

SEND TO

Name: See Attached Service List Firm:
FAX #: Telephone #:

FAX MESSAGE

THE INFORMATION CONTAINED IN THIS FAX MESSAGE IS INTENDED ONLY FOR THE PERSONAL AND CONFIDENTIAL USE OF THE NAMED RECIPIENT(S). THIS MESSAGE MAY BE AN ATTORNEY-CLIENT COMMUNICATION AND AS SUCH IS PRIVILEGED AND CONFIDENTIAL. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT OR AN AGENT RESPONSIBLE FOR DELIVERING IT TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT YOU HAVE RECEIVED THIS DOCUMENT IN ERROR AND THAT ANY REVIEW, DISSEMINATION, DISTRIBUTION, OR COPYING OF THIS MESSAGE IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE, AND RETURN THE ORIGINAL MESSAGE TO US BY MAIL. THANK YOU.

FROM

Name: Dawn S. Pittman Floor: 26
Operator Sending: Telephone # 415-442-1225
FAX #: 877.432.9652 Date Sent: 1/4/2006

No of Pages:
(including cover page)

COMMENTS

Please see attached.

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Morgan Lewis
C O U N S E L O R S A T L A W

January 4, 2006

VIA FACSIMILE

Eric A. Smith, Esq.
Rackemann, Sawyer & Brewster
One Financial Center
Boston, MA 02111-2659

Re: Request and Pending Subpoena for Production of The Home Insurance Company Documents (*Fuller-Austin Asbestos Settlement Trust, et al. v Zurich-American Insurance Co.*,
San Francisco Superior Court Case No. CGC-04-431719)

Dear Mr. Smith:

Our office has reviewed your November 11, 2005, correspondence and proposal regarding the joint subpoena filed by Plaintiffs and Defendants in the above-referenced suit. We write solely on behalf of our clients, the insured plaintiffs, and make no representations (and take no positions) on behalf of the defendants. We address the issues raised by your correspondence in the order in which they appear therein.

First, each of the cases seeking to hold Zurich liable for The Home's insuring obligations and pending before Judge Kramer in the San Francisco Superior Court have been "co-ordinated" for discovery purposes. Thus, those issues that have application across each suit—i.e. issues concerning the Zurich entities, the Home, and the facts and circumstances surrounding the transaction and relationship between Zurich and Home, will be co-ordinated, and the discovery shared as between the parties. The Court has already addressed the concern set forth in your correspondence regarding duplicative discovery efforts. We are more than willing (indeed we are obligated) to work to avoid duplicative discovery; however, we have no control over whether the Liquidator may "address requests for documents arising out of those cases [pending before Judge Kramer] at one time." To the extent discovery demands regarding particular policies or coverage issues are unique to each plaintiff or set of plaintiffs, it is likely the need, scope and

Morgan Lewis
COUNSELORS AT LAW

Eric A. Smith, Esq.
January 4, 2006
Page 2

timing of the discovery may differ. This is particularly true where you have requested that production of certain documents proceed in a staggered or "sequenced" fashion. While our clients do not currently require documents regarding coverage information for each individual plaintiff, it is clear such issues will certainly arise and be the subject of discovery in the future. We are willing to address these issues through an agreement by and between the parties and the Home. However, if the Liquidator will require additional subpoenas for such documents, we will file and serve subpoenas for each action to ensure there is no confusion about the scope of the document demands for each of the cases. Please advise how you wish to proceed. Finally, per your request, we enclose herewith "Exhibit A," a list of the various plaintiffs we represent in each of the actions referenced during our call.¹

Second, we, as counsel for plaintiffs, see no reason why the cost of the document search should be borne by our clients—as our clients are part of the very group of Home policyholders whom have been damaged by the Zurich/Home transactions and activities in the first instance. Our clients have borne more than enough of the burden and cost of the Home insolvency. We will not volunteer to undertake more. Additionally, as you may recall, during our initial negotiations, my firm previously offered to undertake the document review, and asked only that the Liquidator provide us with access to the relevant files. Our offer remains open.

Third, the document demands were drafted at the direction of Judge Kramer, and intentionally seek to ensure we obtain access to all relevant documents and data, particularly given the Home's threatened destruction of certain files. As such, we believe your claim that the requests are "overly broad and unduly burdensome" is without merit. Additionally, the California suits will not focus on "alter-ego" per se as an initial issue, but rather will focus upon issues concerning the "lawful" or "unlawful" nature of the activities and business practices of Zurich (and Home). Nevertheless, we are not opposed to a phased or sequenced production where the transactional, financial, regulatory filing, corporate records (and similar documents) of the Home and Zurich are produced first.

Fourth, we cannot agree without further discussion to your proposed compromise on the scope of the document production. Such discussions must include the propriety of any claims of "confidentiality" regarding requested documents, as well as the status of all electronic data, whom is responsible for its maintenance, who has access to the data, etc. Please advise of an available time within the next two weeks of January that you are available to discuss these issues. I have copied counsel for the related California actions on this correspondence and request their availability as well to facilitate a conference call with all interested parties. If we are unable to reach a timely agreement, we will be forced to proceed with the document subpoena(s).

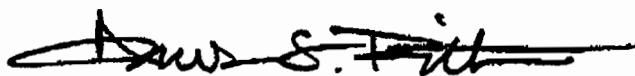
¹ Please do note a fourth action was filed, encaptioned *Pneumo-Abex v. Zurich American Insurance Company, et al*, SF Superior Court Case No. CGC-05-442745. This case similarly seeks to hold the Zurich entities liable for the Home losses and pending before Judge Kramer. Our office does not represent any party to that suit.

Morgan Lewis
COUNSELORS AT LAW

Eric A. Smith, Esq.
January 4, 2006
Page 3

Thank you for your prompt assistance in this regard.

Sincerely,

A handwritten signature in black ink, appearing to read "Dawn S. Pittman", with a long horizontal flourish extending to the right.

Dawn S. Pittman

cc: Please see attached service list.
(via facsimile)

EXHIBIT A

1. *Western Asbestos Settlement Trust, et al. v Zurich-American Insurance Company, et al.*
(San Francisco Superior Court Case No. CGC-04-436181)

- Western Asbestos Settlement Trust
- Western Mac Arthur Company
- Mac Arthur Company
- Western Asbestos Company

2. *Fuller-Austin Asbestos Settlement Trust, et al. v Zurich-American Insurance Company, et al.*
(San Francisco Superior Court Case No. CGC-04-431719)

- Fuller-Austin Asbestos Settlement Trust
- Fuller-Austin Insulation Co.
- Kraft Foods Global, Inc.
- National Dairy Products Corporation
- Kraftco Corporation
- Kraft, Inc. (including Humko, Inc.)
- General Foods Corporation (including Atlantic Gelatin Co.)
- Nabisco Brands Co.
- Nicor Gas Company
- PubliCARD, Inc.
- Somerset Oil, Inc.
- Southland Oil Company
- Ohio Edison Company
- Pennsylvania Power Company
- The Cleveland Electric Illuminating Company
- Toledo Edison Company
- ITT Industries, Inc.
- Swan Transportation Company
- Swan Asbestos & Silica Settlement Trust
- Monongahela Power Company
- West Penn Power Company
- The Potomac Edison Company

3. *PepsiAmericas, Inc., et al. v Zurich-American Insurance Company, et al.*
(San Francisco Superior Court Case No. CGC-05-442140)

- PepsiAmericas, Inc.
- Southern Natural Gas Company
- El Paso Production Company
- Petro-Tex Chemical Corporation Dissolution, Distribution, Liquidating, And Recovery Trust
- Tennessee Gas Pipeline Company

Eric A. Smith, Esq.
January 4, 2006
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January 4, 2006
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January 4, 2006
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•California Insurance Guarantee Association

RACKEMANN, SAWYER & BREWSTER

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ERIC A. SMITH
(617) 951-1127

January 18, 2006

BY FACSIMILE

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C. Guerry Collins, Esq.
Lord Bissell & Brook, LLP
300 S. Grand Avenue, Suite 800
Los Angeles, CA 90071-3119

**Re: Fuller-Austin Asbestos Settlement Trust v. Zurich-American Insurance
Company and related cases: Potential New Hampshire subpoena**

Dear Counsel:

As you know, we represent Roger A. Sevigny, Commissioner of Insurance of the State of New Hampshire, in his capacity as Liquidator ("Liquidator") of The Home Insurance Company ("Home"). We have reviewed Ms. Pittman's letter of January 4, 2006 regarding my letter and proposal of November 11, 2005 concerning the subpoena that has been requested by the parties to the Fuller-Austin case in a petition filed with the New Hampshire Court. The letter states that it is solely on behalf of the plaintiffs, and takes no positions on behalf of the defendants. We have not otherwise heard from the defendants.

In the letter, the plaintiffs essentially reserve the right to seek additional discovery on coverage for the various plaintiffs, decline to bear any of the cost of searching for documents, disagree with the Liquidator's view that the requested 48 category production is overly broad and unduly burdensome, and request a conference call with all counsel in the related California actions to discuss the proposal concerning the scope of production made in my November 11 letter.

The Liquidator's proposal concerning scope was a careful effort to set forth a more narrowly drawn set of categories for potential production without imposing a substantial burden on the insolvent Home. It would be most efficient for the plaintiffs to provide a written response

RACKEMANN, SAWYER & BREWSTER

Dawn S. Pittman, Esq.

Randy Branitsky, Esq.

C. Guerry Collins, Esq.

January 18, 2006

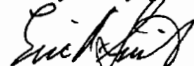
Page 2

to that proposal, and for the defendants (and any plaintiffs represented separately) then to provide their written comments, if any. A written response to the proposal would permit the Liquidator to assess the overall burden that might be imposed, and it also would enable us to identify and consider the issues in advance of any "all hands" discussion. This approach will focus discussions, and it provides for at least some coordination of positions among those seeking the subpoena. We do not want to discuss scope with the plaintiffs only to find that the defendants (or other plaintiffs) have different views, and a free for all discussion would promote confusion, not resolution, without prior specification of the parties' positions. Please let me know when we may expect the plaintiffs' response and the defendants' comments.

The December 5, 2005 Joint Case Management Statement reports that the parties have agreed to a discovery exchange schedule with document production beginning January 9, 2006. Further, we understand that the California Court has directed the parties to submit a stipulation that describes the sale to Zurich of the Home renewal business and that this stipulation will be the basis for briefing the issue whether the sale violated the California Insurance Code. In the circumstances, we ask whether it makes sense to pursue discovery of Home at this point, let alone the extremely broad and expensive non-party discovery described in the proposed subpoena.

This letter is an effort by the Liquidator to reasonably address the issues raised by the requested subpoena by agreement. Additional issues may arise, and the Liquidator reserves all rights to object to the requested subpoena in the event these matters cannot be resolved amicably.

Very truly yours,



Eric A. Smith

RACKEMANN, SAWYER & BREWSTER

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ERIC A. SMITH
(617) 951-1127

April 7, 2006

BY OVERNIGHT COURIER

Megan K. Rosichan, Esq.
Morgan Lewis & Bockius, LLP
One Market, Spear Street Tower
San Francisco, CA 94105

Re: The Home Insurance Company

Dear Ms. Rosichan:

We represent Roger A. Sevigny, Commissioner of Insurance of the State of New Hampshire, as Liquidator ("Liquidator") of The Home Insurance Company ("Home"). I write concerning the three subpoenas directed to The Home Insurance Company in Liquidation issued on behalf of the plaintiffs, Fuller-Austin Asbestos Settlement Trust et al. ("Fuller-Austin"), Western Asbestos Settlement Trust et al. ("Western Asbestos"), and PepsiAmericas, Inc. et al. ("PepsiAmericas"), in three actions pending before a single judge in the California Superior Court (Nos. CGC-04-431719, CGC-04-436181, and CGC-05-442140). Morgan Lewis & Bockius represents the plaintiffs in all three actions:

Each of the subpoenas consists of the following documents: (1) a California Superior Court "Deposition Subpoena for Production of Business Records" directed to "The Home Insurance Company in Liquidation, Roger A. Sevigny, Insurance Commissioner of the State of New Hampshire," in Concord, New Hampshire and directing production in Boston, Massachusetts; (2) an exhibit listing 47 or 48 categories of documents to be produced; and (3) a "Commission to Require Production and Inspection of Documents and Things from The Home Insurance Company in Liquidation" issued by the California Superior Court and directed to "The Courts of the State of New Hampshire." The subpoenas were delivered to the New Hampshire Insurance Department in Concord, New Hampshire.

These California subpoenas are not effective. A subpoena seeking non-party discovery does not have extra-territorial effect. See International Ins. Co v. Montrose Chem. Corp., 231 Cal. App. 3d 1367, 1371 (1991); Moore v. Conifer Corp., 130 N.H. 795, 800 (1988). Moreover, in this case, the non-party is an insurance company in liquidation in New Hampshire, and all proceedings against Home are enjoined by the Order of Liquidation entered June 13, 2003 by the

Megan K. Rosichan, Esq.

April 7, 2006

Page 2

Superior Court for Merrimack County, New Hampshire, in the liquidation proceeding. A copy of the Order of Liquidation is attached as Exhibit A. Discovery requests of non-parties in other states must be made under the procedures of the state in which the non-party is located. The plaintiffs correctly recognized this in obtaining the commissions from the California Superior Court requesting the assistance of the New Hampshire courts. Fuller-Austin has also filed a petition with the New Hampshire courts (although not in the liquidation) seeking issuance of a New Hampshire subpoena based on the same August 23, 2005 commission that is attached to the Fuller-Austin California subpoena. We understand that the petition remains pending.

We note that the Liquidator has already sought to address the requests for documents outside of the court process through negotiation of a reasonable agreement. The 48 categories of documents listed on the exhibit to the Fuller-Austin subpoena appear to be the same 48 categories that are the subject of Fuller-Austin's petition, and they appear to be essentially the same as the 47 categories listed on the exhibits to the Western Asbestos and PepsiAmericas subpoenas. On November 11, 2005, the Liquidator advised Fuller-Austin and the other parties to the Fuller-Austin case of his concerns regarding the request for the 48 categories (which cover a 20 year period), including that the request is overly broad and unduly burdensome, especially in the context of an insolvent insurer in liquidation. The Liquidator raised certain questions and proposed a more focused and reasonable production of documents to address all of the California actions in a coordinated fashion. A copy of my November 11, 2005 letter on behalf of the Liquidator is attached as Exhibit B.

Fuller-Austin and the other plaintiffs represented by Morgan Lewis have not provided a substantive response to the Liquidator's proposal. The last communication prior to the attempted service of the California subpoenas was on January 18, 2006. My letter of that date sought to obtain a written response to the Liquidator's proposal from Fuller-Austin (and other plaintiffs) so that other parties to the California cases could express their views. This would permit the Liquidator to assess the overall burden that might be imposed and provide a process to potentially reach a comprehensive resolution of the issue. A copy of my January 18, 2006 letter is attached as Exhibit C. To date, we have not received any response from the plaintiffs, unless delivery of the ineffective subpoenas was intended as one.

The Liquidator remains open to discussion of the proposal as outlined in my November 11, 2005 and January 18, 2006 letters. The Liquidator reserves all rights in the event these matters cannot be resolved amicably.

Very truly yours,



Eric A. Smith

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

Docket No. 03-E-0106

**In the Matter of the Rehabilitation of
The Home Insurance Company**

ORDER OF LIQUIDATION

This proceeding was commenced on March 4, 2003, upon the Verified Petition for Rehabilitation of Paula T. Rogers, Commissioner of Insurance for the State of New Hampshire (the "Commissioner"). The Commissioner filed the Verified Petition for Rehabilitation pursuant to RSA 402-C:15, seeking appointment as receiver of The Home Insurance Company ("The Home") for the purpose of rehabilitating and conserving the assets of The Home. On March 5, 2003, this Court entered an Order Appointing Rehabilitator, in which the Commissioner was appointed Rehabilitator of The Home. The Commissioner, as Rehabilitator, has now determined pursuant to RSA 402-C:19 that further attempts to rehabilitate The Home would be futile, that The Home is insolvent within the meaning of RSA 402-C:3 and RSA 402-C:20, II, and that it should be liquidated. On May 8, 2003, the Commissioner, as Rehabilitator, filed a Verified Petition for Order of Liquidation pursuant to RSA 402-C:5, RSA 402-C:19 and RSA 402-C:20 (the "Petition"), in which she has sought an order of liquidation for The Home, her appointment as Liquidator, and the requested permanent injunctions. After having heard and considered the facts set forth in the Petition, the Court finds that the law and facts are

as the Commissioner has alleged in the Petition and that there exists a present necessity for the entry of this order.

WHEREFORE, it is hereby ordered, adjudged and decreed that:

- (a) The proceeding for the rehabilitation of The Home is hereby terminated pursuant to RSA 402-C:19;
- (b) The Home is declared to be insolvent;
- (c) Sufficient cause exists for an order to liquidate The Home;
- (d) Paula T. Rogers, Commissioner of Insurance for the State of New Hampshire, and her successors in office, is hereby appointed Liquidator of The Home;
- (e) The Liquidator shall cancel all in-force contracts of insurance and bonds effective as of 30 days after the date of this Order;
- (f) The Liquidator is directed forthwith to take possession of the assets of The Home wherever located and administer them under the orders of the Court. The Liquidator is vested with title to all of the property, contracts and rights of action and all of the books and records of The Home, wherever located, and in whomever's possession they may be found;
- (g) The Liquidator is directed to secure all of the assets, property, books, records, accounts and other documents of The Home (including, without limitation, all data processing information and records comprised of all types of electronically stored information, master tapes, source codes, passwords, or any other recorded information relating to The Home);
- (h) The Liquidator is authorized to transfer, invest, re-invest and otherwise deal with the assets and property of The Home so as to effectuate its liquidation;

(i) The Liquidator is authorized to acquire, hypothecate, encumber, lease, improve, sell, transfer, abandon or otherwise dispose of or deal with any property of the insurer at its market value or upon such terms and conditions as are fair and reasonable without prior permission of the Court in the ordinary course of business;

(j) The Home and its directors, officers, employees, agents, and representatives are prohibited from proceeding with the business of The Home, except upon the express written authorization of the Liquidator;

(k) The Home and its directors, officers, employees, agents, and representatives, and any persons acting in concert with The Home, are prohibited from disposing, using, transferring or removing any property of The Home, without the express written authorization of the Liquidator, or in any way (i) interfering with the conduct of the Liquidator or (ii) interfering with the Liquidator's possession and rights to the assets and property of The Home;

(l) Any bank, savings and loan association or other financial institution or other legal entity is prohibited from disposing of or allowing to be withdrawn in any manner property or assets of The Home, except under the express written authorization of the Liquidator or by further order of this Court.

(m) All actions and all proceedings against The Home whether in this state or elsewhere shall be abated in accordance with RSA 402-C:28 and RSA 402-C:5, except to the extent the Liquidator sees fit and obtains leave to intervene;

(n) To the full extent of the jurisdiction of the Court and the comity to which the orders of the Court are entitled, all persons are hereby permanently enjoined and restrained from any of the following actions:

(1) commencing or continuing any judicial, administrative, or other action or proceeding against The Home or the Liquidator;

(2) commencing or continuing any judicial, administrative, or other action or proceeding against The Home's, the Rehabilitator's or the Liquidator's present or former directors, officers, employees, agents, representatives, or consultants, including, without limitation, Risk Enterprise Management Limited and each of its officers, directors and employees, arising from their actions on behalf of The Home, the Rehabilitator or the Liquidator;

(3) enforcing any judgment against The Home or its property;

(4) any act to obtain possession of property of The Home or to exercise control over property of The Home;

(5) any act to create, perfect, or enforce any lien against property of The Home;

(6) any act to collect, assess, or recover a claim against The Home, other than the filing of a proof of claim with the Liquidator; and

(7) the setoff of any debt owing to The Home; provided, however, that notwithstanding anything in this Order to the contrary, nothing herein is intended nor shall it be deemed to stay any right of setoff of mutual debts or mutual credits by reinsurers as provided in and in accordance with RSA 402-C:34;

(o) The Court hereby seeks and requests the aid and recognition of any Court or administrative body in any State or Territory of the United States and any Federal Court or administrative body of the United States, any Court or administrative body in any Province or Territory of Canada and any Canadian Federal Court or

administrative body, and any Court or administrative body in the United Kingdom or elsewhere to act in aid of and to be complementary to this Court in carrying out the terms of the Order;

(p) All persons doing business with The Home on the date of the Liquidation Order are permanently enjoined and restrained from terminating or attempting to terminate such relationship for cause under contractual provisions on the basis of the filing of the petition to rehabilitate The Home, The Home's assent to the entry of the Rehabilitation Order, the entry of the Rehabilitation Order, the filing of this Petition, the entry of the Liquidation Order, the rehabilitation or liquidation proceedings for The Home, or The Home's financial condition during the rehabilitation or liquidation proceedings;

(q) All persons in custody or possession of any property of The Home are hereby directed and ordered to turn over any such property to the Liquidator;

(r) The Liquidator is authorized, in her discretion, to pay expenses incurred in the course of liquidating The Home, including the actual, reasonable, and necessary costs of preserving or recovering the assets of The Home, wherever located, and the costs of goods and services provided to The Home estate in this and other jurisdictions. Such costs shall include, but not be limited to: (1) reasonable professional fees for accountants, actuaries, attorneys and consultants with other expertise retained by the Department, the Commissioner or the Liquidator to perform services relating to the liquidation of The Home or the feasibility, preparation, implementation, or operation of a liquidation plan; (2) compensation and other costs related to representatives, employees or agents of The Home or its affiliates who perform services for The Home in liquidation;

and (3) the costs and expenses of and a reasonable allocation of costs and expenses associated with time spent by New Hampshire Insurance Department personnel and New Hampshire Department of Justice personnel in connection with the rehabilitation and the liquidation of The Home;

(s) The Liquidator is authorized to employ or continue to employ, to delegate authority to and fix the compensation of such appropriate personnel, including actuaries, accountants, consultants, special counsel, and counsel in this and other jurisdictions, as she deems necessary to carry out the liquidation of The Home and its worldwide operations, subject to compliance with the provisions of RSA 402-C, the supervision of the Liquidator, and of this Court. The Liquidator is authorized to continue at her sole discretion to retain the services of Risk Enterprise Management Limited, subject to court approval;

(t) The Liquidator is authorized to appoint, and determine the compensation and terms of engagement of, a special deputy to act for her pursuant to RSA 402-C:25, I.

(u) The actual, reasonable and necessary costs of preserving, recovering, distributing or otherwise dealing with the assets of The Home, wherever located, and the costs of goods or services provided to The Home estate under paragraph (i) of the Rehabilitation Order, during the Rehabilitation proceeding, and under paragraphs (r)-(t) and (v) of the Liquidation Order, during the Liquidation proceeding, shall be treated as "costs and expenses of administration," pursuant to RSA 402-C:44, I;

(v) The Liquidator is authorized and directed to work with any joint provisional liquidator or other person of comparable position appointed by a foreign

tribunal with respect to all or any portion of the estate of The Home located outside the United States (the "foreign estates") for the purpose of preserving, recovering and incorporating into the domiciliary estate all assets of The Home located outside the United States. The Liquidator is authorized to fund from the domiciliary estate the costs and expenses of administering the foreign estates;

(w) The Liquidator is directed to administer and make payments on all claims against The Home estate filed with the Liquidator in the domiciliary proceeding, including the claims of claimants residing in foreign countries (provided the assets of such foreign estate are transferred to the Liquidator), in accordance with New Hampshire's priority statute, RSA 402-C:44;

(x) The amounts recoverable by the Liquidator from any reinsurer of The Home shall not be reduced as a result of the prior rehabilitation proceeding or this liquidation proceeding or by reason of any partial payment or distribution on a reinsured policy, contract or claim, and each reinsurer of The Home is, without first obtaining leave of this Court, hereby enjoined and restrained from terminating, canceling, failing to extend or renew, or reducing or changing coverage under any reinsurance policy or contract with The Home. The Liquidator may, in her discretion, commute any contract with a reinsurer or reinsurers;

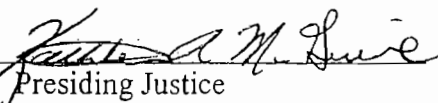
(y) To the full extent of the jurisdiction of the Court and the comity to which the orders of the Court are entitled, all actions or proceedings against an insured of The Home in which The Home has an obligation to defend the insured are hereby stayed for a period of six months from the date of the Order and such additional time as the Court may determine pursuant to RSA 404-B:18;

(z) Within one year of the entry of this Order, and then annually thereafter, the Liquidator shall file with the Court a financial report, as of the preceding December 31, in accordance with RSA 402-C:21, V, which shall include, at a minimum, the assets and liabilities of The Home and all funds received or disbursed by the Liquidator during the period;

(aa) The Liquidator shall have full powers and authority given the Liquidator under RSA 402-C of Title XXXVII, and under provisions of all other applicable laws, as are reasonable and necessary to fulfill the duties and responsibilities of the Liquidator under RSA 402-C of Title XXXVII, and under the Order, specifically including, but not limited to, each and every power and authority bestowed upon the Liquidator under RSA 402-C:25, I-XXII, the provisions of which are incorporated by reference in their entirety into this Order, and the common law of New Hampshire; and

(bb) The deadline for the filing of claims pursuant to RSA 402-C:26, II, RSA 402-C:37, I, and RSA 402-C:40, II, shall be one year from the date of this Order.

Date: 6/13/03
Time: _____

By: 
Presiding Justice

RACKEMANN, SAWYER & BREWSTER

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ERIC A. SMITH
(617) 951-1127

November 11, 2005

BY FACSIMILE

Dawn Pittman, Esq.
Morgan Lewis & Bockius, LLP
One Market, Spear Street Tower
San Francisco, CA 94105

Randy J. Branitsky, Esq.
Wilkie, Farr & Gallagher
1875 K Street, N.W.
Washington, D.C. 20006

C. Guerry Collins, Esq.
Lord Bissell & Brook, LLP
300 S. Grand Avenue, Suite 800
Los Angeles, CA 90071-3119

Re: Fuller-Austin Asbestos Settlement Trust v. Zurich-American Insurance Company and related cases: Potential New Hampshire subpoena

Dear Counsel:

I write on behalf of Roger A. Sevigny, Commissioner of Insurance of the State of New Hampshire, in his capacity as Liquidator ("Liquidator") of The Home Insurance Company ("Home") pursuant to the Order of Liquidation issued by the Superior Court for Merrimack County, New Hampshire ("New Hampshire Court"), on June 13, 2003. This letter will follow up on our October 12, 2005 call concerning the subpoena that has been requested by the parties to the Fuller-Austin case in a petition filed with the New Hampshire Court on September 23, 2005.

The requested subpoena seeks 48 categories of documents. The categories specify various time periods, many of which extend for numbers of years. As we discussed, a number of the categories are included within the 10 categories of documents that the Liquidator agreed to retain at the request of the plaintiffs represented by Morgan Lewis. (See my letter to David Weiss of Morgan Lewis dated June 20, 2005). The agreed time periods are generally much less than those now requested.

The Liquidator has identified several concerns about the requested subpoena. First, the subpoena is only from the plaintiffs in the Fuller-Austin case. I understand that there are at least three other cases involving similar issues pending before Judge Kramer in California. The Liquidator would like to address requests for documents arising out of those cases at one time,

Dawn Pittman, Esq.

Randy Branitsky, Esq.

C. Guerry Collins, Esq.

November 11, 2005

Page 2

and it appears that CIGA wants to be sure that the request encompasses coverage materials relating to the Western Asbestos case. During the call it was agreed that the parties to the California actions would provide the Liquidator with a list of all the plaintiffs in those actions. I understand that the parties are considering seeking a new commission from the California Court that would be the same in scope as the commission issued in Fuller-Austin except that it would apply to all plaintiffs. The Liquidator would have the same objections to the scope of such a commission, if it were presented to the New Hampshire Court as a basis for a subpoena, as to the presently requested subpoena.

Second, Home has been declared insolvent, and responding to the potential subpoena will take up the limited resources of the liquidation staff and impose costs that will reduce the amounts available for distribution to priority creditors. Responding will entail not only identifying and segregating documents (which are anticipated to be voluminous) through a reasonable search of Home's files but also reviewing them for privilege and other grounds for non-production. (The Home staff involved in the recapitalization included a number of attorneys, and Home also had outside counsel. The Home's files thus are expected to contain many privileged documents and must be reviewed with care.) In the circumstances, the subpoena is unduly burdensome. During the call, I asked whether the parties would be agreeable to paying the costs of responding to the subpoena. Counsel for plaintiffs and Zurich indicated they would discuss the issue with their clients. We are still trying to evaluate the potential cost of the review, but it would be helpful to know whether plaintiffs and Zurich are willing to consider the point or not.

Third, the requested subpoena is extremely broad both in subject matters and time periods covered. As framed, it is overly broad and unduly burdensome. During our call, the plaintiffs and Zurich indicated some flexibility with respect to the sequencing of production, but not with respect to the scope. With respect to sequencing, however, the parties differed on the documents that should be the subject of initial production: the plaintiffs wanted to begin with documents concerning Home's financial condition, while Zurich sought to focus first on coverage for the underlying claims. I understand that the discovery in the California actions will initially focus on "alter ego" issues. In addition, plaintiffs have filed proofs of claim with the Liquidator, and those proofs of claim will be the subject of determinations under N.H. RSA 402-C:45 and the Claims Procedures Order issued in the liquidation proceeding (as revised and restated on January 19, 2005). In these circumstances, the Liquidator proposes to defer issues concerning production of documents concerning the plaintiffs' claims for coverage under Home's policies. As they are related to pending proofs of claim, files concerning the plaintiffs' claims and the policies involved in those claims are being retained for use in the liquidation.

Dawn Pittman, Esq.

Randy Branitsky, Esq.

C. Guerry Collins, Esq.

November 11, 2005

Page 3

Fourth, the scope of requested production is incredibly broad. Request 8, for example, asks for "all documents that refer or relate to Home's financial status from 1985 to the present." During our call, the plaintiffs were not willing to narrow the time frames. Rather than debate each request, the Liquidator proposes to use the categories on the attached exhibit as the basis for a potential agreed production. In order to create a document that can be more easily used in the course of conducting a reasonable search, the attachment consolidates many of the requests into fewer categories. It also uses time frames that more reasonably relate to the 1995 transactions that appear to be the subject of the plaintiffs' complaint and end at the point when Home was placed in rehabilitation.

The requested production asks for documents regarding (i) information requests by the New Hampshire Insurance Department of Home and Zurich concerning the Facultative Reinsurance Facility Agreement and any amendment to that Agreement, and (ii) Home's and Zurich's responses to any such requests. Any such requests and responses would be confidential and not subject to subpoena. See RSA 400-A:37, IV-a(a) (and former RSA 400-A:37 IV(d)); RSA 401-B:7; RSA 404-F:8, I. In these circumstances, a search for such documents in Home's possession is unwarranted.

The requested production also seeks electronic records. The Home liquidation's computer system was created as a stand alone system during mid to late 2003. While various individuals may have such records from before that time, the review to identify any responsive records would be unduly burdensome. To the extent that Home has backup tapes from prior periods, identification of producible records would require restoring data to servers from tapes and then some form of manual review of the files on the restored servers, both to identify any responsive documents and to separate out documents regarding REM clients other than Home. Especially in the context of an insolvent non-party, the burden of attempting to identify responsive electronic records is unduly burdensome and unreasonable.

Please let me know whether (a) this potential subpoena, as supplemented by the names of the plaintiffs in the other consolidated California actions, represents the requests for documents from Home on behalf of all the parties to the California actions, (b) the parties requesting the production will agree to pay the Liquidator the cost of making the production, and (c) the parties will agree to a reasonable production in the scope set forth on the attachment and in this letter. Assuming that we can reach agreement on these issues, the Liquidator will seek to produce responsive documents within the agreed scope on a reasonable schedule that accommodates the other tasks of the liquidation staff.

RACKEMANN, SAWYER & BREWSTER

Dawn Pittman, Esq.

Randy Branitsky, Esq.

C. Guerry Collins, Esq.

November 11, 2005

Page 4

This letter is an effort by the Liquidator to reasonably address the issues raised by the requested subpoena by agreement. Additional issues may arise, and the Liquidator reserves all rights to object to the requested subpoena in the event these matters cannot be resolved amicably.

Very truly yours,

A handwritten signature in black ink, appearing to read "Eric A. Smith". The signature is written in a cursive style with a large, stylized initial "E".

Eric A. Smith

POTENTIAL AGREED SCOPE OF PRODUCTION – DISCUSSION DRAFT 11/11/05

- 1) Budgets for Home and its subsidiaries dated 1994 – 1998;
- 2) Documents dated 1994 – 1996 concerning Zurich’s recapitalization of Home as described in Zurich’s Form A application as amended;
- 3) Internal operational and management reports produced by Home’s executive management (management reporting directly to Home’s CEO) dated 1994 – 1998;
- 4) Documents dated 1994-February 2003 concerning the Renewal Rights Agreement dated June 12, 1995, including documents concerning payments thereunder. This does not include documents that might be found in individual insureds’ underwriting, policy or claim files;
- 5) Monthly and annual financial reports produced by Home’s executive management dated 1994 – 1998;
- 6) Home’s annual statements for years 1985 – 2002;
- 7) Documents dated 1994 – February 2003 concerning the Aggregate Excess of Loss Reinsurance Agreement dated June 12, 1995 (“AEOLA”), including documents concerning payments made thereunder;
- 8) Documents dated 1994 – February 2003 concerning the Facultative Reinsurance Agreement dated December 24, 1994, including documents concerning payments thereunder. This does not include documents that might be found in individual insureds’ underwriting, policy or claim files;
- 9) Documents dated 1994 – February 2003 concerning Amendment No. 1 to the Facultative Reinsurance Facility Agreement dated February 9, 1995 (the “Fronting Amendment”) or any other amendment to the Facultative Reinsurance Facility Agreement, including documents concerning payments thereunder. This does not include documents that might be found in individual insureds’ underwriting, policy or claim files;
- 10) Documents dated 1995 – 1998 concerning communications from Home to its policyholders regarding Home’s recapitalization by Zurich and possible renewal of policies by Zurich. This does not include documents that might be found in individual insureds’ underwriting, policy or claim files;
- 11) Documents dated 1990 – February 2003 concerning the Aggregate Excess of Loss Cover dated February 13, 1991, including documents concerning payments thereunder;
- 12) Documents dated 1994 – February 2003 concerning the Portfolio Value Swap Agreement dated June 12, 1995, including documents concerning payments thereunder;
- 13) Documents dated 1994 – February 2003 concerning the Services Agreement dated June 12, 1995
- 14) Documents dated 1994 – February 2003 concerning the Securityholders’ Agreement dated June 12, 1995

RACKEMANN, SAWYER & BREWSTER

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ERIC A. SMITH
(617) 951-1127

January 18, 2006

BY FACSIMILE

Dawn S. Pittman, Esq.
Morgan Lewis & Bockius, LLP
One Market, Spear Street Tower
San Francisco, CA 94105

Randy J. Branitsky, Esq.
Wilkie, Farr & Gallagher
1875 K Street, N.W.
Washington, D.C. 20006

C. Guerry Collins, Esq.
Lord Bissell & Brook, LLP
300 S. Grand Avenue, Suite 800
Los Angeles, CA 90071-3119

**Re: Fuller-Austin Asbestos Settlement Trust v. Zurich-American Insurance
Company and related cases: Potential New Hampshire subpoena**

Dear Counsel:

As you know, we represent Roger A. Sevigny, Commissioner of Insurance of the State of New Hampshire, in his capacity as Liquidator ("Liquidator") of The Home Insurance Company ("Home"). We have reviewed Ms. Pittman's letter of January 4, 2006 regarding my letter and proposal of November 11, 2005 concerning the subpoena that has been requested by the parties to the Fuller-Austin case in a petition filed with the New Hampshire Court. The letter states that it is solely on behalf of the plaintiffs, and takes no positions on behalf of the defendants. We have not otherwise heard from the defendants.

In the letter, the plaintiffs essentially reserve the right to seek additional discovery on coverage for the various plaintiffs, decline to bear any of the cost of searching for documents, disagree with the Liquidator's view that the requested 48 category production is overly broad and unduly burdensome, and request a conference call with all counsel in the related California actions to discuss the proposal concerning the scope of production made in my November 11 letter.

The Liquidator's proposal concerning scope was a careful effort to set forth a more narrowly drawn set of categories for potential production without imposing a substantial burden on the insolvent Home. It would be most efficient for the plaintiffs to provide a written response

RACKEMANN, SAWYER & BREWSTER

Dawn S. Pittman, Esq.

Randy Branitsky, Esq.

C. Guerry Collins, Esq.

January 18, 2006

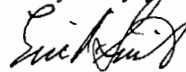
Page 2

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The December 5, 2005 Joint Case Management Statement reports that the parties have agreed to a discovery exchange schedule with document production beginning January 9, 2006. Further, we understand that the California Court has directed the parties to submit a stipulation that describes the sale to Zurich of the Home renewal business and that this stipulation will be the basis for briefing the issue whether the sale violated the California Insurance Code. In the circumstances, we ask whether it makes sense to pursue discovery of Home at this point, let alone the extremely broad and expensive non-party discovery described in the proposed subpoena.

This letter is an effort by the Liquidator to reasonably address the issues raised by the requested subpoena by agreement. Additional issues may arise, and the Liquidator reserves all rights to object to the requested subpoena in the event these matters cannot be resolved amicably.

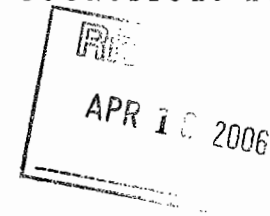
Very truly yours,



Eric A. Smith

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San Francisco, CA 94105
Tel: 415.442.1000
Fax: 415.442.1001
www.morganlewis.com

Morgan Lewis
C O U N S E L O R S A T L A W



Megan K. Rosichan
Associate
415.442.1229
mrosichan@morganlewis.com

APRIL 13, 2006

VIA FEDERAL EXPRESS

Eric A. Smith, Esq.
Rackemann, Sawyer & Brewster
One Financial Center
Boston, Massachusetts 02111-2650

Re: Subpoenas Served on the Home Insurance Company in Liquidation in New Hampshire

Dear Mr. Smith:

Our office is in receipt of your letter, dated April 7, 2006. As you know, the three subpoenas served on your client were jointly served by plaintiffs and the Zurich entity defendants in the *Western Asbestos Settlement Trust v. Zurich-American Insurance Company*, *Fuller Austin Asbestos Settlement Trust v. Zurich-American Insurance Company*, and *PepsiAmericas Inc. v. Zurich-American Insurance Company*. Each of these subpoenas required the production of responsive documents on or before April 13, 2006. Your client has not produced such documents and therefore is in violation of the subpoenas.

While your correspondence asserts that the California subpoenas served on your client are not effective, the cases you cite do not support your contention. Specifically, *Moore v. Conifer Corporation*, 130 N.H. 795, 800 (N.H. 1988), does not address New Hampshire's procedure for an out-of-state third party subpoena. Further, the California case cited, *International Insurance Company v. Montrose Chemical Corporation*, 231 Cal.App.3d 1367 (1991), is wholly irrelevant to the proper procedures for service of an out-of-state subpoena in New Hampshire.

We have complied in all respects with New Hampshire's procedure for out-of-state third party subpoenas. Indeed, we conferred directly with and were advised by the Clerk of the Superior Court for Merrimack County, Mr. William McGraw, regarding New Hampshire's procedure for out-of-state third party subpoenas. Mr. McGraw advised that New Hampshire requires an out-of-state party to obtain a commission for the issuance of a subpoena in the state in which the

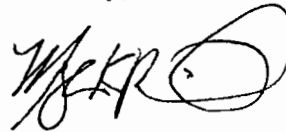
Eric A. Smith, Esq.
April 13, 2006
Page 2

action is pending and then the issuance of a subpoena from the state court from which the commission was obtained. We have followed this exact procedure.

If it is your contention that the procedure we followed was improper under New Hampshire law, please point to contrary authority. Moreover, if your client contends that the subpoenas served upon them were improper, your client's remedy lies with the courts. Your letter does not cure your client's failure to produce documents on the date stated on the subpoena, April 13, 2006.

We are, of course, willing to discuss your client's production of all responsive documents listed on the subpoenas. However, if your client continues to refuse to respond to the subpoenas, we will use all available means to seek enforcement of the subpoenas. Please contact me to discuss this matter immediately.

Sincerely,

A handwritten signature in black ink, appearing to read 'M.K.R.', with a large, stylized circular flourish at the end.

Megan K. Rosichan

cc: Rachel Smith, Esq.
Albert Bedecarre, Esq.
Randy Branitsky, Esq.
Richard Mancino, Esq.

LEXSTAT CAL CIVIL PROC CODE S 2026.010

DEERING'S CALIFORNIA CODES ANNOTATED
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*** THIS DOCUMENT REFLECTS ALL URGENCY LEGISLATION ENACTED ***
*** THROUGH 2006 CH. 21, APPROVED 4/24/06 ***

CODE OF CIVIL PROCEDURE
PART 4. Miscellaneous Provisions
TITLE 4. Civil Discovery Act
CHAPTER 10. Oral Deposition Outside California

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Code Civ Proc § 2026.010 (2006)

§ 2026.010. Taking of oral deposition in another state or in a territory or insular possession; Procedures and process; Issuance of commission

(a) Any party may obtain discovery by taking an oral deposition, as described in Section 2025.010, in another state of the United States, or in a territory or an insular possession subject to its jurisdiction. Except as modified in this section, the procedures for taking oral depositions in California set forth in Chapter 9 (commencing with Section 2025.010) apply to an oral deposition taken in another state of the United States, or in a territory or an insular possession subject to its jurisdiction.

(b) If a deponent is a party to the action or an officer, director, managing agent, or employee of a party, the service of the deposition notice is effective to compel that deponent to attend and to testify, as well as to produce any document or tangible thing for inspection and copying. The deposition notice shall specify a place in the state, territory, or insular possession of the United States that is within 75 miles of the residence or a business office of a deponent.

(c) If the deponent is not a party to the action or an officer, director, managing agent, or employee of a party, a party serving a deposition notice under this section shall use any process and procedures required and available under the laws of the state, territory, or insular possession where the deposition is to be taken to compel the deponent to attend and to testify, as well as to produce any document or tangible thing for inspection, copying, and any related activity.

(d) A deposition taken under this section shall be conducted in either of the following ways:

(1) Under the supervision of a person who is authorized to administer oaths by the laws of the United States or those of the place where the examination is to be held, and who is not otherwise disqualified under Section 2025.320 and subdivisions (b) to (f), inclusive, of Section 2025.340.

(2) Before a person appointed by the court.

(e) An appointment under subdivision (d) is effective to authorize that person to administer oaths and to take testimony.

(f) On request, the clerk of the court shall issue a commission authorizing the deposition in another state or place. The commission shall request that process issue in the place where the examination is to be held, requiring attendance and enforcing the obligations of the deponents to produce documents and answer questions. The commission shall be issued by the clerk to any party in any action pending in its venue without a noticed motion or court order. The commission

may contain terms that are required by the foreign jurisdiction to initiate the process. If a court order is required by the foreign jurisdiction, an order for a commission may be obtained by ex parte application.

HISTORY:

Added Stats 2004 ch 182 § 23 (AB 3081), operative July 1, 2005.

NOTES:

Historical Derivation:

Former CCP § 2026, added Stats 1986 ch 1334 § 2, amended Stats 1987 ch 86 § 9, Stats 2000 ch 474 § 3, Stats 2001 ch 812 § 10. Official Comment:

LAW REVISION COMMISSION COMMENTS:

2004—Subdivision (a) of Section 2026.010 continues former Section 2026(a) without change, except to conform the cross-references.

Subdivision (b) continues former Section 2026(b)(1) without change.

Subdivision (c) continues former Section 2026(b)(2) without change.

Subdivision (d) continues the first sentence of former Section 2026(c) without substantive change.

Subdivision (e) continues the second sentence of former Section 2026(c) without substantive change.

Subdivision (f) continues the third, fourth, fifth, sixth, and seventh sentences of former Section 2026(c) without substantive change. Related Statutes & Rules:

Discovery in municipal and justice courts; use of oral deposition under this section: *CCP § 94*.

Powers of judicial officers to call witnesses and take depositions: *CCP § § 177, 179*.

Service of notices: *CCP § § 1010 et seq.*

Subpoena for witnesses: *CCP § § 1985, 1985.5, 1986*.

Default or nonappearance after notice as waiver of notice of application: *CCP § 2004*.

"Action": *CCP § 2016*.

"Court": *CCP § 2016*.

"Document": *CCP § 2016*.

Oral depositions in California: *CCP § 2025*.

Oral deposition in another nation: *CCP § 2027*.

Written depositions: *CCP § 2028*.

Application of this section to deposition of listed trial expert witness: *CCP § 2034*.

Oral depositions for discovery before action filed: *CCP § 2035*.

Oral depositions for discovery pending appeal: *CCP § 2036*.

Persons authorized to administer oaths: *CCP § 2093*.

Form of oath: *CCP § 2094*.

Examination of witnesses on commission in criminal cases: *Pen C § § 1349 et seq.*

Oil and gas conservation proceedings, depositions in: *Pub Res C § 3357*.

Format of discovery motions: *Cal. Rules of Court, Rule 335*.

Service of papers on non-party deponent: *Cal. Rules of Court, Rule 337*. Collateral References:

Cal Forms PI & Practice (Matthew Bender) ch 190 "Depositions and Discovery" III.

Matthew Bender(R) Practice Guide: *California Civil Discovery, ch. 7*.

Matthew Bender(R) Practice Guide: *California Landlord-Tenant Litigation, ch. 1*.

Witkin Evidence (3d ed) Discovery and Production of Evidence § § 1461, 1473.

Cal Jur 3d (Rev) Discovery and Depositions § § 15 et seq.

Am Jur 2d (Rev) Depositions and Discovery § § 15 et seq.

Preparing for Discovery Under the New Act. (1986, CEB) pp 145-146.

Obtaining discovery: Initiating and responding to discovery procedures. CEB Action Guide, Spring 1991.

Unavailable witnesses and out-of-state records and documents. 10 CEB Civ Lit Rep No. 3 p 93.

Persons before whom deposition may be taken within the United States: *USCS FRCP 28(a)*.

Rutter Cal Prac Guide, Civil Procedure Before Trial, 8:635-642.1.

Forms:

Suggested form is set out below, following notes of decisions.