

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

Docket No. 03-E-0106

SUPERIOR COURT
2005 MAY 26 P 2:52

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

**SUPPLEMENT TO THE ACE COMPANIES' MOTION TO STRIKE AFFIDAVIT
AND VERIFICATION OF RHYDIAN WILLIAMS**

Respondents Century Indemnity Company, ACE Property and Casualty Insurance Company, Pacific Employers Insurance Company and ACE American Reinsurance Company (collectively, the "ACE Companies"), by their attorneys, Orr & Reno P.A., supplement their Motion to Strike Affidavit and Verification of Rhydian Williams as follows:

(1) At approximately 10:00 a.m. on Thursday, May 26, 2005, the ACE Companies, through Orr & Reno, P.A., caused the Motion to Strike Affidavit and Verification of Rhydian Williams ("the Motion") to be filed with the Merrimack County Superior Court after advising the Liquidation Clerk that it would like to schedule a hearing on this Motion as soon as the Court's calendar permits.

(2) In the Motion, the ACE Companies represented that as of the filing of the Motion they had not received a response from Equitas to the e-mail of May 20, 2005 in which their counsel, Gary S. Lee, Esquire, requested confirmation from Equitas' counsel that Equitas had produced all documents relied upon by Mr. Williams in developing his Affidavit, including internal Equitas documents related to Equitas' evaluation of its alternative means of pursuing recovery and external documents reflecting legal or other advice Equitas had received regarding the viability of other means of pursuing recovery. *See* Motion, ¶ 8 and Exhibit 1 to Motion. Mr.

Lee had also requested on May 20, 2005, that the handwritten notes produced by Equitas be transcribed due to their indecipherability. *Id.*

(3) At 10:19 a.m. on Thursday, May 26, 2005, after being advised by Mr. Lee that the ACE Companies would be filing a Motion to Strike, and having stated last week that Equitas had produced all documents, Equitas' counsel e-mailed a single document to Mr. Lee. *See* Exhibit 1 to Supplement to Motion. The document provided was an e-mail dated August 5, 2003 from Karen Amos to Jonathan Rosen, with a copy to five other individuals, including Rhydian Williams, attached to which was a "without prejudice - for commutation discussion purposes only" chart of "Off-set scenario's" and "Commercial scenario's." No supporting documentation was produced. Exhibit 2 to Supplement to Motion.

(4) At 10:23 a.m. on May 26, 2005, after the Motion had been filed, Mr. Gordon responded to Mr. Lee's e-mail of May 20, 2005 and stated, in part, "Equitas has produced all documents called for by the Order/Guidelines." *See* Exhibit 3 to Supplement to Motion. Mr. Lee respectfully disagreed. *See* Exhibit 4 to Supplement to Motion. Shortly thereafter, Mr. Gordon responded to Mr. Lee's request of May 20, 2005 regarding transcription of the notes. *See* Exhibit 5 to Supplement to Motion to Strike.

(5) The ACE Companies submit this Supplement to their Motion to Strike to clarify the representation made regarding Equitas' failure to respond to Mr. Lee's e-mail of May 20, 2005, in the original Motion.

(6) Notwithstanding Equitas' belated response to the May 20, 2005 e-mail, the ACE Companies do not believe that Equitas has produced *all* documents reflecting external legal advice on the alternatives considered by Equitas or Equitas' internal evaluation of the alternatives, all external or internal Equitas documents regarding off-set rights, and all

documents reflecting Equitas' communications with other AFIA Cedents. See Exhibit 4 to Supplement to Motion.

WHEREFORE, the ACE Companies respectfully request this Court:

- A. Accept for filing the Supplement to Motion to Strike Affidavit and Verification of Rhydian Williams; and
- B. To grant such other and further relief as this Court deems just and proper.

Date: May 26, 2005

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing pleading has been served on Roger A. Sevigny, Commissioner of Insurance, Peter Bengelsdorf, Special Deputy, and the following counsel via First Class mail on May 26, 2005:

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