

052405(1).txt

1

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE STATE OF NEW HAMPSHIRE
SUPERIOR COURT
MERRIMACK SS
DOCKET NO. 03-E-0106

IN THE MATTER OF:
THE LIQUIDATION OF THE
HOME INSURANCE COMPANY

DEPOSITION OF:
PETER A. BENGELSDORF

⋮
⋮
⋮
⋮
⋮
⋮
⋮
⋮
⋮

TRANSCRIPT of the stenographic notes of the
proceedings in the above-entitled matter, as taken by
and before CAROLYN CHEVANCE, a Notary Public of the
State of New Jersey, held at the office of LOVELLS, 900
Third Avenue, New York, New York on May 24, 2005,
commencing at 10:00 a.m.

2

1
2
3

A P P E A R A N C E S:

LOVELLS

4 052405(1).txt
BY: PIETER VAN TOL, ESQ.
RYAN R. LITTRELL, ESQ.
5 900 Third Avenue
New York, New York 10022
6 Attorneys for Ace
7
8 RACKEMANN SAWYER & BREWSTER
BY: J. DAVID LESLIE, ESQ.
ERIC A. SMITH, ESQ.
9 One Financial Center
Boston, Massachusetts 02111
10 Attorneys for The Home and the
Witness
11
12 SCHIFF HARDIN LLP
BY: DENNIS G. LAGORY, ESQ.
13 6600 Sears Tower
Chicago Illinois 60606
14 Attorneys for Cedents
15
16 DOWNS RACHLIN MARTIN PLLC
BY: ANDRE D. BOUFFARD, ESQ.
17 Courthouse Plaza
199 Main Street
18 Burlington, Vermont 05402
Attorneys for Benjamin Moore
19
20
21
22
23
24
25

□

1 PETER A. BENGELSDORF
2 (Whereupon, Exhibit 1,
3 Affidavit of Mr. Bengelsdorf, was
4 marked for identification by the
5 Court Reporter.)
6
7 PETER A. BENGELSDORF, having
8 been duly sworn by the Notary
9 Public, testified as follows:
Page 2

10 A Quite honestly, I don't
11 remember exactly what I meant by that.

12 Q Do you recall the issue of
13 side arrangements or cut throughs being
14 raised at the September 17th meeting?

15 A Yes.

16 Q Was one of the questions that
17 you were asking Rackemann to look at, the
18 legality of a side arrangement or cut
19 through? 

20 A If you're asking me what was
21 redacted, I don't recall what is in the
22 redacted section of these notes.

23 Nor do I recall the subject
24 matter of what questions I had for
25 Rackemann.

27

1 PETER A. BENGELSDORF

2 Q Well, apart from what is
3 redacted, do you recall that Mr. Leslie's
4 firm was looking into the legality of cut
5 throughs or side deals?

6 A I believe I answered the
7 question previously. I don't recall if
8 they performed an analysis of that or
9 not.

10 Q Since you say under oath in
11 your affidavit that you advised others
12 that side arrangements would be subject
13 to a legal challenge, is it fair to
14 assume that at some point you received a
15 legal opinion that cut throughs would not

16 be legal?

17 A I don't know whether it was a
18 legal opinion or just legal advice.

19 Q Okay. But it is your
20 understanding that you at some point
21 received some advice from a lawyer that a
22 cut through or side arrangement would not
23 be legal, correct?

24 A Yes.

25 Q Do you recall when that was?

28

1 PETER A. BENGELSDORF

2 A I don't recall the exact
3 date.

4 Q Do you recall when it is that
5 you advised either the ACE Group or the
6 AFIA Cedents that side arrangements would
7 not be legal?

8 A Remember the date of the
9 letter, which was September 26, 2003.
10 That letter was not sign signed by me, it
11 was signed by the liquidator and the
12 joint provisional liquidator.

13 Q It is your understanding that
14 the statements in that letter were backed
15 up by some legal analysis that was
16 performed?

17 A I would expect so.

18 Q Going back to your affidavit,
19 Mr. Bengelsdorf, do you see in the next
20 sentence -- at the top of the page, right

22 through H553. It appears to be advice
23 from Robin Knowles, QC and Professor Ian
24 Fletcher.

25 A Yes.

52

1 PETER A. BENGELSDORF

2 Q Have you ever seen this
3 document before today?

4 A I don't recall.

5 Q Let me point you to the
6 conclusion, which is on page H553.

7 Do you see in the conclusion
8 Messrs. Knowles and Fletcher state:

9 "We therefore conclude that
10 English law will not allow for the U.K.
11 branch assets to be ring fenced for the
12 benefit of U.K. branch creditors."

13 Do you see that?

14 A Yes.

15 Q Do you have any reason to
16 disagree with that statement?

17 A I can only comment on the
18 opinion that it is a legal opinion, but
19 it is subject to what the court might do
20 with respect to the winding up order of
21 The Home, U.K. branch.

22 Q Have you ever received
23 contrary legal opinion?

24 MR. LESLIE: I'm going to
25 instruct Mr. Bengelsdorf not to

53

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PETER A. BENGELSDORF

offer -- it's privileged, any legal
advice he received, it's privileged
and not to testify to that.



MR. VAN TOL: Well, the
existence of it, and that's all I
want to know.

Q Mr. Bengelsdorf, have you
ever received any legal advice that the
conclusion of Mr. Knowles and
Mr. Fletcher in Exhibit 6 is incorrect?

MR. LESLIE: That goes to the
question of what advice he received,
right?

MR. VAN TOL: It's yes or no.

MR. LESLIE: Your question is
directed to ask him about the legal
advice he received.

MR. VAN TOL: He testified
several times this morning about
whether or not he received legal
advice.

And I'm asking him the same
question here: Have you?

MR. SMITH: He can testify

54

1
2
3
4
5
6

PETER A. BENGELSDORF
whether or not that was the subject
of legal advice, but your question
the way it is phrased --

MR. VAN TOL: Look, I'm going
to push this, and we're going to get

4 advice if any he received?

5 MR. VAN TOL: I'll read it

6 back.

7 Q Did you ever obtain any other
8 advice from a U.K. lawyer on the issue of
9 ring fencing?

10 A Any advice would have been
11 directed to Clifford Chance, and received
12 from Clifford Chance by the provisional
13 liquidator.

14 Q Are you aware of any opinion
15 other than what is in Exhibit 6?

16 A I think I answered the
17 question before.

18 I don't recall any specific
19 legal advice regarding ring fencing,
20 other than what you presented me. That
21 doesn't mean it does not exist.

22 Q So I'm clear, as far as you
23 know, the liquidator, not the joint
24 provisional liquidator but the
25 liquidator, did not obtain any advice

66

1 PETER A. BENGELSDORF
2 from U.K. counsel on ring fencing?

3 A You are asking did -- did the
4 provisional -- am I aware of anything the
5 provisional liquidator sought by outside
6 counsel as respects ring fencing?

7 Q No, I'm asking a slightly
8 different question.

9 I'm asking whether the

10 liquidator in New Hampshire also obtained
11 a note of advice similar to what is in
12 Exhibit 6, from a U.K. lawyer?

13 A I don't recall any such
14 advice having been sought.

15 Q And you would know of it,
16 right?

17 A It's possible I would have
18 known of it or Jonathan Rosen would have
19 known of it. We were the two individuals
20 working on this matter, as respects to
21 Home.

22 Q Has Mr. Rosen ever told you
23 that he received an opinion on U.K. law
24 relating to ring fencing, other than what
25 is in Exhibit 6?

67

1 PETER A. BENGELSDORF

2 A I don't recall.

3 Q When is the last time that
4 one of the AFIA Cedents suggested that
5 the U.K. assets would be walled off?

6 A I would -- I believe sometime
7 around the October 21 meeting was the
8 last time that I remember it being
9 brought up as a subject.

10 Beyond that I can't recall
11 any substantive discussions in that
12 regard pertaining to that matter.

13 Q So there was one time?

14 A That was one time when it was

