

EXHIBIT
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THE STATE OF NEW HAMPSHIRE
MERRIMACK COUNTY
NH SUPERIOR COURT
MERRIMACK COUNTY SUPERIOR COURT
CONCORD, NH

In the Matter of the)
Liquidation of the Home) Docket No: 03-E-0106
Insurance Company)

STATUS CONFERENCE

Before: Honorable Kathleen A. McGuire
Presiding Justice, held at
Concord, New Hampshire, on
Friday, April 9, 2004

* * *

APPEARANCES:

For the Liquidator: Peter Roth
Attorney at Law

For the Respondents: Ron Snow
(ACE Companies) Attorney at Law

Pieter Van Tol
Gary Lee
Attorneys at Law

(Benjamin Moore) Andre D. Bouffard
Attorney at Law

Court Reporter: Michelle A. H. McGirr
CSR/RPR
Official Court Reporter

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Friday

April 9, 2004

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P R O C E E D I N G S

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THE COURT: Good morning.

As I understand it, we're here on a status conference on the liquidator's motion for approval of the agreement and compromise with the AFIA Cedents. I know some of you, but I don't know most of you, and I know you've already given your name to the court reporter, but if you'd repeat them for me now, I'd appreciate it.

MR. BOUFFARD: Your Honor, my name's Andre Bouffard. I'm with Downs, Rachlin & Martin in Burlington, Vermont, and I represent Benjamin Moore.

THE COURT: Yes.

MR. SNOW: Ron Snow, Orr & Reno,

1 representing ACE Companies. With me is Gary Lee
2 of the New York office of Lovells. Next to him
3 is his colleague, Pieter Van Tol, of the same
4 office, Your Honor. All of us are representing
5 the ACE Companies.

6 THE COURT: Okay.

7 MR. ROTH: Your Honor, Peter Roth for
8 the liquidator from the Attorney General's
9 Office.

10 THE COURT: Okay. Now, I understand
11 today we're just here for a status conference,
12 kind of a scheduling-type conference; and I
13 guess for the purposes of today, the most
14 important thing we have to determine is are we
15 having an evidentiary hearing on this matter,
16 right? Is that the number one thing we need to
17 determine?

18 MR. SNOW: Seems to me, Your Honor,
19 there are two issues. One, as you've just
20 announced, the second is the need for discovery,
21 limited discovery.

22 THE COURT: Okay. Does that matter --
23 does the discovery request or the resolution of

1 that involve whether it's going to be an
2 evidentiary hearing or not or is it the other
3 way around, the discovery will determine whether
4 there's a need for an evidentiary hearing?

5 MR. SNOW: I think it's little bit of
6 both. Clearly our clients believe there's a
7 need for an evidentiary hearing on something
8 this significant. It doesn't have to be a week
9 long hearing, but a day or two. They clearly
10 believe that they need discovery.

11 I have one housekeeping matter I have
12 to take up with the court which is my motion for
13 pro hac vice admission of these two gentlemen,
14 which was not contested but --

15 THE COURT: I think I've signed those.

16 MR. SNOW: I hadn't gotten it yet. I
17 wanted to make sure it was okay for the Court
18 for them to speak if necessary.

19 THE COURT: Yes. I'm pretty sure I
20 granted those, but maybe not.

21 MR. SNOW: Mr. Van Tol is going to be
22 the spokesman.

23 MR. VAN TOL: Good morning, Your

1 Honor.

2 THE COURT: Good morning.

3 Mr. Roth, do you agree that we're here
4 on those two issues, the discovery and the need
5 for an evidentiary rehearing and how they
6 interplay?

7 MR. ROTH: Yes, I agree with that. My
8 concern obviously is that the interest of these
9 parties and their desire to have that I think is
10 seriously tainted and I think that to engage in
11 those proceedings is a waste of the Court's
12 time, a waste of the liquidator's time and a
13 waste of --

14 THE COURT: Before we get to the
15 merits, before we get to argument on it, I want
16 to know if you agree those are the issues.

17 MR. ROTH: Yes, those are the issues.
18 If we need an evidentiary hearing of what scope
19 and when -- and if we do need an evidentiary
20 hearing, then what scope of discovery if any is
21 appropriate.

22 THE COURT: Now, does this issue have
23 to be resolved before -- is it June 31 when the

1 claims must be filed?

2 MR. ROTH: The claims date is June
3 13th. There is a deadline in the agreement
4 letter by which the agreement dies if it's not
5 approved by the Court and it's sometime in early
6 June. It could be the bar date, I'm not
7 certain. Our concern is that if this gets
8 brought forward through to June or late in May
9 or really much beyond today or next week, if
10 we're going to have to take this up on simply
11 oral argument and offers of proof --

12 THE COURT: But wait. Regardless, I
13 have to make an order --

14 MR. ROTH: Right.

15 THE COURT: -- and it's not exactly a
16 simple issue, at least --

17 MR. ROTH: Of course, but if there's
18 to be discovery --

19 THE COURT: But the question is again
20 does this issue have to be resolved by June
21 13th?

22 MR. ROTH: Absolutely and as early
23 before June 13th the better because if we send a

1 signal to the English AFIA Cedents, this is
2 going to drag on with evidentiary and a
3 discovery process, the deal could fall apart.

4 MR. VAN TOL: Your Honor, a simple yes
5 or no would suffice in our papers to move back
6 the bar date or any agreed upon dated for the
7 AFIA Cedents. On their date it's --

8 THE COURT: A different claims date
9 than for the rest?

10 MR. VAN TOL: Exactly, Your Honor. I
11 think that's very simple and cost effective and
12 we would propose that.

13 MR. ROTH: We're concerned that is not
14 going to make the AFIA Cedents comfortable. If
15 they see this is going to be a long, drawn out
16 process, if we lose one AFIA Cedent from the
17 deal, we have seven or eight or nine of them
18 lined up. If we lose one, they're going to
19 start running for the sky is falling kind of
20 thing and we're going to lose the deal.

21 THE COURT: Why don't we start then
22 with whether there's a need for an evidentiary
23 hearing. It seems to me just looking at the

1 issue that it seems to be a matter of law
2 whether or not under the statute setting forth
3 such an agreement is something that the
4 liquidators can approve of and the Court can
5 order.

6 MR. VAN TOL: We agree, Your Honor,
7 that it's a matter of law and if the Court is
8 inclined to go that way -- to find in favor of
9 the ACE Companies and find the liquidator cannot
10 do so, but if there's any question in the
11 Court's mind about whether the liquidator has
12 such discretion, there are fact issues which
13 form this case that must be fully fleshed out
14 and can't be handled on affidavits alone. These
15 affidavits are from people who have an interest
16 in the outcome of the matter. I'm not impugning
17 their motive, but I believe it's incumbent to
18 have those witnesses in front of Your Honor so
19 Your Honor can listen to their testimony, make a
20 credibility determination, how much weight is
21 the Court going to give this evidence. This is
22 an extraordinary, complex matter that can't be
23 handled on papers alone.

1 THE COURT: Well, isn't the issue, I
2 mean, whether the Court has the authority to
3 order such an agreement?

4 MR. VAN TOL: It is, Your Honor, in
5 the first instance. All we are saying as a back
6 up, if the Court is at all inclined to say that
7 the liquidator does have such a power, it is his
8 responsibility to show why that exercise of
9 discretion --

10 THE COURT: Okay.

11 MR. VAN TOL: -- is at all rational.

12 THE COURT: So there are two different
13 issues. One is whether such an agreement can be
14 ordered, but the second one is whether it's an
15 abuse of discretion, I guess, to order it.

16 MR. VAN TOL: Precisely, Your Honor.
17 We don't believe the liquidator has such
18 discretion, but to the extent he does, it has to
19 have a rational basis. It's that basis on which
20 there's a wealth of complex facts.

21 THE COURT: I guess then I would
22 rather do it in two parts then, the matter of
23 whether or not as a matter of law it's something

1 that can be ordered and then whether or not the
2 Court should exercise -- say that it is
3 something the Court can do -- whether the -- and
4 get to the later issue if -- and I don't even
5 know if that would be an issue, I'm not saying
6 that, but if it is an issue, then take it up at
7 that point --

8 MR. VAN TOL: Certainly.

9 THE COURT: -- and do it in two steps.

10 MR. VAN TOL: Would you anticipate
11 accepting further briefing? If there's late
12 issues raised in the Court's reply, we would
13 like to bring it to Court's attention.

14 THE COURT: Sure. Okay.

15 So is that okay, Mr. Roth?

16 MR. ROTH: Yeah, I think that would
17 work for us. Again, we're on -- time is of the
18 essence, Your Honor -- a very short time frame
19 so if they have additional briefing, I would say
20 let's see it by the middle of next week. I
21 mean, we've got -- I keep coming back to this
22 point. Why are they here and I think the
23 pleading they filed yesterday really says it

1 all. When put to defining and describing why
2 they're here, why they objected to this, the
3 best they could come up with is they have a
4 right to ensure that any action concerning the
5 reinsurance proceeds in which they have an
6 undisputed property interest comports with New
7 Hampshire statutory scheme and principles of due
8 process and fairness. Well, their interest in
9 it is in not paying the estate. That's their
10 undisputed property interest, in keeping their
11 money from us. And so they're here today and
12 this whole program is designed to keep their
13 money from us. They have a very small creditor
14 interest, but this appearance today alone
15 probably cost more than the creditor interest
16 they've already -- that they're claiming against
17 us. So I just -- it's -- to me it's frightening
18 that this kind of an array can be made for this
19 kind of a motive against what we're trying to
20 do, which is reasonable and lawful; and I think
21 that on the submissions that we have already
22 made, we can come up with a determination -- I
23 think the Court can determine that not only what

1 the liquidator is doing is lawful, but the
2 affidavits that we've presented and just the
3 overall nature of the scheme suggests that it is
4 also reasonable. What they're trying to do is
5 prevent paying a debt to the state -- to the
6 estate. They're trying to reap a windfall for
7 themselves for one of their own or two of their
8 own from this estate. And I just -- I implore
9 the Court to not allow that to happen because if
10 this deal falls apart, we're going to have these
11 guys and five other lawyers just like them in
12 courts all around the country and in England
13 fighting each one of these AFIA Cedent claims
14 and it's not going to be pretty and not produce
15 any benefit to the estate.

16 MR. BOUFFARD: Your Honor, may I
17 speak to that point?

18 THE COURT: Yes.

19 MR. BOUFFARD: I just want to make
20 sure it's clear that the ACE Companies don't
21 speak for my client. My client is entirely
22 separate and distinct. My client is a policy
23 holder claimant in these proceedings --

1 THE COURT: But are you still
2 objecting to the agreement?

3 MR. BOUFFARD: Yes. We have filed our
4 objection to the agreement.

5 THE COURT: All right. And you're
6 just concerned that there won't be enough money
7 in the class II pot --

8 MR. BOUFFARD: Well, no.

9 THE COURT: -- if the agreement goes
10 through, is that your position?

11 MR. BOUFFARD: No. Our view, Your
12 Honor, is that we cannot understand why the
13 liquidator has come to the conclusion that it is
14 a reasonable judgment to pay 50 million dollars
15 to the AFIA Cedents to incite them to file
16 claims in these proceedings; and despite the
17 liquidator's attempts in his papers to
18 articulate a rationale for that decision, it
19 isn't in there. There's no rationale, there's
20 no explanation for that for that position.

21 THE COURT: Okay. Am I wrong that if
22 this agreement doesn't go through, there's not
23 really a way for the liquidator to recoup the

1 money and get any of it into the class II pot?

2 MR. BOUFFARD: Yeah. I think that is
3 wrong, Your Honor. There are -- it seems to me
4 that there are any number of ways that the
5 liquidator might go about getting the money into
6 the pot, to use the Court's words.

7 THE COURT: Okay. How would the
8 liquidator do that?

9 MR. BOUFFARD: Well, one possibility I
10 suppose would be for the liquidator to go to the
11 ACE Companies and ask the ACE Companies whether
12 or not they want to commute their reinsurance
13 agreements, for example. That would be a very
14 simple way to do it. It doesn't -- I haven't
15 seen in the papers any suggestion that the
16 liquidator has done that. That's just one
17 possibility that I am suggesting here that would
18 be lawful under the liquidation statute. It
19 would be quick, easy and expeditious, but I
20 don't know from looking at the papers whether or
21 not the liquidator has ever had such a
22 conversation with the Ace group.

23 What do you say as to that, Mr. Roth?