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March 11, 2005

**BY EMAIL & FIRST CLASS MAIL**

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

Re: In the Matter of the Liquidation of The Home Insurance Company

Dear Gary:

I write in response to your letter of February 18, 2005 concerning the Liquidator's letter and privilege logs dated February 14, 2005.

First, you raise concerns that ACE cannot ascertain that documents the Liquidator identified in paragraphs 1(b)-(d) and 3 of the February 14<sup>th</sup> letter contain the substance of attorney-client communications. The documents are addressed below, except for those in paragraph 3, which were adequately described in the February 14<sup>th</sup> letter (although you should note that documents 35, 82 and 149 are further described below in Sections 1(c) and 1(d)). You should also note that, contrary to your characterization, many of these documents were either authored by counsel or received by counsel, as reflected on the Liquidator's privilege logs.

**1 (b) Documents reflecting legal advice.** As previously noted, the following email messages are being withheld because they contain the substance of legal advice previously provided by counsel. While we of course cannot provide you with that substance, we provide the following additional information:

**December 21, 2004 Privilege Log**

13(1)-The redacted ¶ responds to the attached email from MH to counsel (document 13(2)), which has been withheld as privileged
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136(1)-KM responds to JR concerning proposed text for letter to cedents circulated by counsel in document 136(3), which has been withheld as privileged
179(1)-Same as document 136(1)
203(2)-Documents 203(1) and 203(2) comprise essentially one email sent to counsel. 203(2) is SE's email to GH that was forwarded "for information" twenty minutes later to counsel in 203(1)
301(1)-PB summarizes/restates for RS' benefit the attached document 301(2), which is an email from PH that is withheld as privileged

**January 5, 2005 Privilege Log**

24(1)-Now produced beginning at page H02697
24(2)-Now produced beginning at page H02697
25(3)-Email addressed to counsel
25(4)-Email addressed to counsel
59(3)-SE comments on attached emails with counsel, documents 59(4) & 59(5)
60(4)-Same as document 59(3)
84(1)-Same as document 136(1) from the 12/21/04 privilege log, as discussed above

1 (c) **Notes concerning communication with counsel.** As previously noted, the following documents are being withheld as they are notes, or documents that contain notes, prepared for and used during, taken during, or made after a meeting or other communication with counsel:

**December 21, 2004 Privilege Log**

31-PB typewritten notes circulated to counsel among others in advance of meeting (same as document 149)
32-Now produced at page H02700
35-Draft letter to AFIA cedents with PB's notes prepared for discussion with counsel
37-Draft letter to AFIA cedents with PB's notes prepared for discussion with counsel
47-PB notes from 9/22/03 conference call with counsel (PR, ES, DL) and others (RS, AF, JR)
67-PB draft email to GH, which was ultimately sent to GH and counsel (see document 171)
82-PB handwritten notes regarding a term sheet for commutation with ACE INA for discussions with counsel
84-PB notes of conference call with counsel (DS and DL) and JR regarding "Durkin/ACE"
87-PB notes from 1/07/04 conference call with counsel regarding Unionamerica redraft
93-PB draft email to GH and also to counsel (email contains specific instructions to/requests of ES and DL)
94-PB draft email to SE, which was ultimately sent to SE and counsel (see documents 96(2), 120(2), 206(2))
118- Draft letter to AFIA cedents with JR's notes prepared for discussion with counsel
119- Draft letter to AFIA cedents with JR's notes prepared for discussion with counsel

149-PB typewritten notes circulated to counsel among others in advance of meeting (same as document 31)
161-Draft letter to AFIA cedents with JR's notes prepared for discussion with counsel
247-Draft letter to AFIA cedents with MH's notes prepared for discussion with counsel
265-RS notes of conference call with counsel (PR, DL) and others (JR and SE) regarding "ACE/INA"
266-AF notes of conference call with counsel, DL, and PB regarding ICC meeting
267-AF notes of conference call with counsel (ES and PR) and PB regarding "ACE Issue" and Agrippina
268-AF notes of conference call with counsel (PR and DL) and others (PB, JR, GH, SE) regarding FSA meeting and meeting with ACE
269-AF notes of conference call with counsel (DL and ES), PB and JR regarding on-going liquidation matters
270-AF notes of conference call with counsel (DL, DS, PH, PR) and others (PB, GH, SE, JR) regarding "AFLA Pool Issues"
271-AF notes of conference call with counsel (DL, ES, PR) and others (PB and JR) regarding "AFIA Business resolution"
272-AF notes of meeting with counsel (DL), PB and RS regarding on-going liquidation matters
274-Draft letter to AFIA cedents with PB's notes prepared for discussion with counsel

1 (d) Drafts reflecting legal advice. As previously noted, the following are withheld because they are draft documents that reflect legal advice or were being provided to counsel for review:

**December 21, 2004 Privilege Log**

35-Draft letter to AFIA cedents prepared by CC
37-Draft letter to AFIA cedents prepared by CC
43-Draft slides for the 10/21/03 ICC meeting for discussion with counsel (same as document 187(3))
44-Draft US/UK Liquidation Procedures Co-ordination Matrix prepared by CC
50-Draft letter to AFIA cedents prepared by CC
66-Draft US/UK Liquidation Procedures Co-ordination Matrix prepared by CC
117-Draft letter to AFIA cedents prepared by CC
118-Draft letter to AFIA cedents prepared by CC
119-Draft letter to AFIA cedents prepared by CC
121-Draft letter to AFIA cedents prepared by CC
161-Draft letter to AFIA cedents prepared by CC
187(3)-Draft slides for the 10/21/03 ICC meeting for discussion with counsel (same as document 43)
247- Draft letter to AFIA cedents prepared by CC

<sup>1</sup> The privilege log inadvertently identifies these as JR's notes. They are PB's notes found in JR's files.

274- Draft letter to AFIA cedents prepared by CC
275- Draft letter to AFIA cedents prepared by CC and PB typewritten notes circulated to counsel among others in advance of meeting
357- Draft US/UK Liquidation Procedures Co-ordination Matrix prepared by CC

Second, you assert that the Liquidator has failed to provide ACE with means to ascertain whether the proceedings described in paragraph 6 of the Liquidator’s February 14<sup>th</sup> letter constitute litigations or trials under New Hampshire Superior Court Rule 35(b)(2). The Liquidator notes that descriptions of each document and the litigation “in anticipation of” which each document was prepared have been noted either in the January 14<sup>th</sup> letter or on the Liquidator’s privilege logs. The Liquidator believes work product protection applies to each of these documents as follows:

- The US/UK Liquidation Procedures Co-ordination Matrix (2, 3, 8, 9, 42, 44, 48, 66, 285, 343-44, 346, 357) was created by Clifford Chance and in part reflects advice from Rackemann, Sawyer & Brewster. The Matrix was prepared in anticipation of a potential application concerning the relationship of the UK and New Hampshire proceedings to the UK court in the provisional liquidation proceeding.
- Certain memos and draft letters containing the advice of counsel were prepared in anticipation of potential litigation over various issues, as noted in the subject matter descriptions on the privilege log which have been reproduced below:
  - The following were prepared in anticipation of a potential application concerning the relationship of the UK and New Hampshire proceedings to the UK court in the provisional liquidation proceeding:

4	Advice of CC to Liquidator re: UK Insolvency Procedures
5	Advice of CC to BC re: EU Directive
45	Advice of CC re: UK insolvency procedures
159	Priority Status of claims under Home’s Assumed Reinsurance Contracts
321	Reinsureds’ priority
347	EU Directive

- The following were prepared in anticipation of potential litigation over cut-throughs:

46	Advice Memo re: ACE/INA ability to settle with reinsureds
69	Ability of ACE/INA to Settle Directly with The Home’s Reinsureds
167	Ability of ACE/INA to settle directly with The Home’s Reinsureds
168	Ability of ACE/INA to settle directly with The Home’s Reinsureds
169	Cut throughs and the NEMGIA case
188/234	Ability of ACE/INA to settle directly with the Home’s re-insureds
243	Ability of ACE-INA to settle directly with Home’s re-insureds

348	Ability of ACE/INA to settle directly with the Home's Reinsureds
349	Ability of ACE/INA to settle directly with the Home's Reinsureds
350	Ability of ACE/INA to settle directly with the Home's Reinsureds

- Certain draft letters were prepared by counsel in anticipation of potential litigation over cut-throughs. The "Lovells letter" was a draft prepared by Clifford Chance responding to Lovells' letter of September 16, 2003, and addressed cut-throughs (71, 76, 165, 245, 273, 286). The draft letter concerning the Assumption Agreement, also referred to as the joint letter to ACE/INA, was prepared by Rackemann, Sawyer & Brewster in anticipation of potential litigation over cut-throughs (70, 73, 74, 170, 172, 274, 351-56). Note that the final letter to Michael J. Daley of Century Indemnity Company dated September 26, 2003 has been produced (e.g., H00405).
- Draft motions, affidavits and orders were prepared in connection with the motion for approval of the proposed agreement with the AFIA Cedents in the Home liquidation proceeding (1, 7, 97-108, 183-85, 281, 282, 288-92, 299).

We have removed the work product designation from entries for items 55 and 322 on the privilege log. Please note that these two and all other documents referred to in this section are also privileged.

Third, you allege the Liquidator has failed to explain the bases for withholding the following documents. Please consider the following.

**December 21, 2004 Privilege Log**

75-Removed from 2/14 privilege log because the entry was a duplicate entry for document 47 (as stated in the 2/14 privilege log and page 5 of the 2/14 letter)
83-Removed from 2/14 privilege log because the entry was a duplicate entry for document 87 (as stated in the 2/14 privilege log and page 5 of the 2/14 letter)
159-Draft memo from RS&B to RS concerning the priority status of claims under Home's assumed reinsurance contracts (as explained in the 2/14 privilege log and ¶6 of the 2/14 letter)
177(2)-DL added as recipient in the 2/14 privilege log; his name was inadvertently omitted from the original privilege log
178(1)-Same as document 177(2)

**January 5, 2005 Privilege Log**

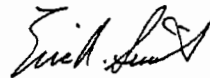
32(5)-Document 32 now produced in redacted form at H02583. Document 32(5) is redacted because it discusses communication with counsel, including DL, DS, PH and PR, as reflected on pages H02584-85.
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Fourth, you have also requested that the Liquidator provide a redaction log. This request does not reflect the "redactions" at issue. The vast majority of the documents we have referred to as redacted documents are emails among a string of attached emails, some of which were produced and some of which had their text withheld by redaction. For example, where we determined that the third email in a sequence of four emails should not be produced, we produced (i) the first, second and fourth emails in sequence and in their entirety, and (ii) the heading to the third email (also in sequence), which shows the date, to, from, and subject lines, among other information, but not the body of the third email. We chose to call emails like the third one in this example, "redacted documents." Alternatively, we could have "withheld" them by redacting the *entire* email and listing it on the privilege log. However, by treating these as redacted documents and producing the information as described above, we have provided you with the items that would appear in a privilege log (the to, from, subject and date lines) as these remain visible on the face of the page. We have also thereby provided context—for example, where that emails sits in sequence, how long it is, its precise timing in connection with other emails in sequence — and thus *more* information than the information that would be reflected on a privilege log entry. In these circumstances, preparing a "redaction" log is a burden that would not provide you with any additional information.

As previously explained in paragraph 7 of the February 14<sup>th</sup> letter, all redactions (other than those specifically listed therein) were made on the basis of the attorney-client privilege. However, in an effort to be as cooperative and as accurate as possible we have re-examined each of the redacted documents and have created the attached Exhibits that list all of the redacted documents and describe the basis for their redaction. Please note that the Exhibits also distinguish between the emails that have been "redacted" following the procedure described above (Exhibit 1), versus those documents that have been redacted in the more traditional sense in that only a portion of the entire text has been blacked out (Exhibit 2). If you have further questions regarding a particular document or about our treatment of redacted documents, please let us know.

Finally, as reflected in the responses above, documents 32 from the December 21, 2004 Privilege Log and 24(1) & (2) from the January 5, 2005 Privilege Log are now being produced and are Bate-stamped as H02697 through H02700.

Very truly yours,



Eric A. Smith

Cc: Andre Bouffard, Esq.

Enclosures (hard copy only)

**Exhibit 1**  
**Documents in Which Text Only Has Been Fully Redacted**

a. **Redacted emails.** Documents found on the following pages include at least one email,<sup>2</sup> the body of which has been redacted. The redacted email appears among a string or sequence of attached emails. In this sequence, the emails to be produced are shown in their entirety and the redacted emails reveal on their face the date, to, from, and subject lines, among other information, all as described in greater detail on page 6 of this letter. All of these documents have been redacted based on attorney-client privilege. Note that counsel's presence in the communication and the subject matter are apparent on the face of the pages previously provided.

H00369(1) <sup>3</sup>	H01276	H01951(1) & (2)	H02241	H02545(1) & (2)
H00370	H01279	H01954(1)-(4)	H02248(1) & (2)	H02548
H00371	H01281	H01955	H02254	H02551
H00447(2)	H01291	H01957(1)-(3)	H02259	H02552
H00481.1	H01292(1) & (2)	H01959	H02263	H02554(1) & (2)
H00484	H01352(1) & (2)	H01963	H02269	H02556
H00529	H01412	H01966	H02279(1)-(3)	H02558
H00726	H01417	H01989	H02305	H02559
H00730	H01432	H02004	H02317(1) & (2)	H02561(1) & (2)
H00747	H01481	H02010	H02320	H02563
H00794	H01630	H02017	H02342	H02565(1) & (2)
H00797	H01675	H02018	H02345(1)-(3)	H02567
H00802	H01683(2) & (3)	H02033	H02346	H02569
H00807	H01684	H02035	H02350(1) & (2)	H02571(1) & (2)
H00809	H01687(1) & (2)	H02039	H02351(1) & (2)	H02572
H00823	H01690	H02042	H02376	H02573
H00868	H01701	H02106	H02386(1) & (2)	H02575
H01082	H01707(1)	H02111	H02408(1)-(3)	H02577(1) & (2)
H01109	H01769(1) & (2)	H02126	H02409	H02580(1) & (2)
H01114	H01811(1) & (2)	H02139(1) & (2)	H02478	H02585(1) & (2)
H01120	H01865(2)	H02152(1) & (2)	H02482	H02588
H01168	H01898(1) & (3)	H02165	H02485(1) & (2)	H02589
H01174	H01899(1) & (2)	H02199	H02488	H02591
H01193(1) & (2)	H01930	H02205	H02491(1) & (2)	H02593(1) & (2)
H01229-30	H01946	H02209	H02492	H02595
H01234	H01947(1) & (2)	H02222	H02495	H02597
H01269	H01948	H02233	H02513	H02698
H01272	H01950(1)-(3)	H02237	H02515	

<sup>2</sup> H01481 contains a message embedded in a fax cover sheet, which we have treated like the email messages.

<sup>3</sup> H00369(1), for example, refers to the first of multiple documents located on page H00369.

**b. Redacted emails with attachments.** Documents found on the following pages contain (i) an email, the body of which has been redacted and (ii) certain attachments which have been produced. In every case, the redacted emails reveal on their face the date, to, from, and subject lines, among other information. All of these documents have been redacted based on attorney-client privilege. Note that counsel's presence in the communication and the subject matter are apparent on the face of the pages previously provided.

H00375	H01179	H01282	H02020
H02224	H02446	H02472	

**c. Attorney-client privilege asserted where attorney not apparent.** Documents found on the following pages were also redacted based on attorney-client privilege. However, additional comments are provided because counsel's presence in the communication is not apparent from the version of the redacted documents previously produced.

<b>Bate-stamp</b>	<b>Notes</b>
H00369(2)	Message from GH responding to attached email from and among counsel (PH, DS, DL, PR)
H01683(1)	Message from GH responding to attached email from and among counsel (PH, DS, DL, PR)
H01909	AF Notes of discussion with counsel, DL
H02560	Draft letter to AFIA cedents prepared by CC
H02576	Draft letter to AFIA cedents prepared by CC
H02584	SE comments on attached emails with counsel (PH, DS, DL, PR)
H02587	SE comments on attached emails with counsel (PH, DS, DL, PR)
H02592	SE comments on attached emails with counsel (PH, DS, DL, PR)



**Exhibit 2**  
**Documents in Which Text Has Been Partially Redacted**

The following documents have been redacted in the more traditional sense in that only a portion of the entire text of each document has been blacked out while the remaining text of the document is revealed in the documents previously provided.

**a. Attorney-client privilege asserted where attorney is apparent.** The following pages contain documents that were partially redacted to remove attorney-client privileged material. Note that counsel's presence in the communication and the subject matter are apparent on the face of the pages previously provided:

H01705	H01707(2)	H01813	H02253
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**b. Attorney-client privilege asserted where attorney not apparent.** Documents found on the following pages were also redacted based on attorney-client privilege. However, additional comments are provided because counsel's presence in the communication is not apparent from the version of the redacted documents previously provided.

<b>Bate-stamp</b>	<b>Notes</b>
H00447(1)	Two separate redactions of text reflecting legal advice, first from DL, and second from CC
H00632	Notes from discussion with counsel, DL
H00656	Email reflects legal advice of CC
H00657	Notes of conversation with RS&B
H00925	Reflects legal advice of CC and RS&B
H01793	Reflects legal advice of RS&B & CC
H01865(1)	Two separate redactions of text that reflects legal advice, first from DL, and second from CC
H01898(2)	Message from GH responding to attached email from and among counsel (PH, DS, DL, PR)
H02543	The redacted text responds to attached email to counsel

**c. Non responsive.** The following pages contain documents that were partially redacted in order to remove non-responsive information:

<b>Bate-stamp</b>	<b>Notes</b>
H00735	re: unrelated commutation agreement
H01910	re: negotiations for unrelated transaction
H01912	re: commutation agreement
H01913	re: employee compensation program
H01915-17	re: special deputy compensation
H01924	re: commutation agreement
H01964	re: commutation agreement