

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

**ACE COMPANIES' REQUEST TO COMPEL  
PRODUCTION OF DOCUMENTS SOUGHT  
FROM AFIA CEDENT UNIONAMERICA INSURANCE CO.**

2005 MAR 15 P 2:47  
NEW HAMPSHIRE SUPERIOR COURT  
MERRIMACK, NEW HAMPSHIRE

Respondents Century Indemnity Company (“Century”), ACE Property and Casualty Insurance Company (“ACE P&C”), Pacific Employers Insurance Company (“PEIC”), and ACE American Reinsurance Company (“AARE”) (collectively the “ACE Companies”) move this Court to compel the production of documents sought from AFIA Cedent :Uion America Insurance Co.

1. On January 13, 2005, Ace Companies served its First Request for Production of Documents on Unionamerica Insurance Co. an AFIA Cedent whose address is St. Paul’s Specialist Services, Suite 1/1 London Underwriting Centre, 3 Minster Court, 3 Minsing Lane, London EC3R 7YJ, England. (See Exhibit 1 attached.)

2. On February 8, 2005, Tammy Lewis, Legal Officer of St. Paul Specialist Services, Ltd. questioned this Court’s authority or jurisdiction to obtain discovery from Unionamerica Insurance Co. Ltd., in this matter. (See Exhibit 2 attached.)

3. On February 15, 2005, Ms. Lewis’s inquiry was addressed by counsel for the ACE Companies who explained that the filing of a claim of just under \$8,000,000 in the Home Liquidation gave this Court jurisdiction to exercise control over these proceedings, and that the

Court had specifically authorized discovery by the parties, including Ace Companies. (See Exhibit 3 attached.)

4. On February 23, 2005, counsel for Ace Companies directed a letter to Ms. Lewis indicating that a motion to compel would be filed if the requested production was not provided in the near future. (See Exhibit 4 attached.)

5. On February 28, 2005, Mr. Open, Director of Cedent Reinsurance for the St. Paul Specialist Services Ltd., responded on behalf of Tammy Lewis, denying that this Court had jurisdiction and questioning the meaning of the Court's Order allowing discovery. (See Exhibit 5 attached.)

6. On March 7, 2005, counsel for Ace Companies responded to Mr. Open, citing both New Hampshire Supreme Court and the United States Supreme Court authority for the proposition that by filing a claim and requesting relief from the Presiding Justice of the appropriate Court, the claimant submitted itself to the equitable jurisdiction of this Court (See Exhibit 6 attached.)

7. To date, there has been no further response to the communication of March 7, 2005, and there has been no indication that Unionamerica Insurance Co. Ltd. intends to comply with the limited discovery requests directed to it.

#### **BASIS OF THIS COURT'S JURISDICTION OVER AFIA CEDENT**

There can be no question that general bankruptcy law grants equitable jurisdiction to the presiding court over all claimants "by presenting their claims, Respondents subjected themselves to all the consequences that attach to an appearance." *Katchen v. Landy, Trustee in Bankruptcy*,

382 U.S. 323, 86 S.Ct. 467 (1966); See also, *Langenkamp v. Culp*, 498 U.S. 42, 111 S.Ct. 330 (1990). “[we] recognize that by filing a claim against a bankruptcy estate, the creditor triggers the process of ‘allowance and disallowance of claims’ thereby subjecting himself to the Bankruptcy Court’s equitable power.”

The principles applicable to a federal bankruptcy proceeding apply for exactly the same reasons to a state insurance insolvency. See NH RSA 402 C:38 (“Proof of Claim”). There is no dispute in this case that the Merrimack County Superior Court for the State of New Hampshire is the exclusive venue for the Home Insurance Company liquidation. The principle that one court exercises exclusive jurisdiction over an insurance liquidation is not a new one. See, *Todd, Commissioner of Insurance of the State of Kansas v. Lakeland Chrysler-Plymouth Dodge, Inc.*, 17 Kansas App.2<sup>nd</sup> 1, 834 Pacific 2<sup>nd</sup> 387 (1992). (“The need for giving one state exclusive jurisdiction over insurance liquidation proceedings has long been recognized in the courts.”) That Court held further “once the claims were received by the receiver, the Defendants, by their actions, accepted the benefits of, and thus submitted themselves to, the jurisdiction of the Kansas courts.” See also, *Benjamin, Supt. of the Ohio Dept. of Insurance in her capacity as Liquidator v. Credit General Insurance Co.*, 2004 WL 3090181 (Ohio App. 2004. (See Exhibit 7 attached.)

WHEREFORE, Ace Companies respectfully request this Court to compel Unionamerica Insurance Co. Ltd. to comply with the First Request for Production of Documents attached hereto as Exhibit 1 by April 8, 2005, and for such other and further relief that may be just and equitable.

Respectfully submitted,  
ACE COMPANIES  
By its attorneys,  
Orr & Reno P.A.

Dated March 15, 2005

By 

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CERTIFICATE OF SERVICE

The undersigned certifies that I served a copy of the foregoing on Tim Open, Director of Ceded Reinsurance, St. Paul Specialist Services Limited, Suite 1/2 London Underwriting Center, 3 Minster Court, Mincing Lane, London EX3R 7YJ, Peter A. Sevigny, Commissioner of Insurance, Peter Bengelsdorf, Special Deputy, and the following counsel via facsimile and First Class mail on March 15, 2005

Paula T. Rogers, Esq.  
Case Administrator  
Office of the Liquidation Clerk  
The Home Insurance Company  
286 Commercial Street  
Manchester, NH 03101

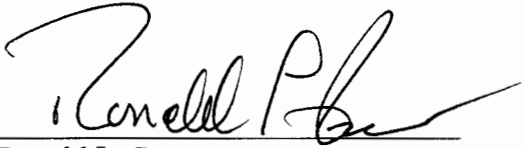
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