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THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

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IN THE MATTER OF:

THE LIQUIDATION OF
THE HOME INSURANCE COMPANY

Docket No.: 03-E-106

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HEARING ON MOTIONS

Before:

Hon. Kathleen A. McGuire
Presiding Justice
on Thursday, May 12, 2005
at Concord, New Hampshire

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Official Court Reporter: Brenda K. Hancock, CCR, RPR

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APPEARANCES:

Referee:

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For The Liquidator and
Joint Provisional
Liquidator:

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(continued page 2)

1 MR. LESLIE: Yes, your Honor.

2 THE COURT: That's what it says.

3 MR. LESLIE: That, we, of course, are quite comfortable with.

4 I think the issue here is whether the Court's most recent
5 order was intended -- as I have just heard the Court
6 explain it, it was not intended as a ruling on the waiver
7 question, but it is an order that directs the Liquidator
8 and the Joint Provisional Liquidator to produce documents
9 that were utilized by the JPL in putting together the
10 affidavit --

11 THE COURT: Yes, correct.

12 MR. LESLIE: -- and that are not, otherwise, privileged.

13 MR. VAN TOL: Well, your Honor --

14 THE COURT: Well, no. Any document -- I don't say it's
15 privileged, therefore -- I mean, if he relied upon those
16 documents, if it's a document he relied on, then he
17 produces it, it's discoverable. I'm not even going to
18 whether he has waived it. If there was a waiver or not,
19 and if there is a privilege, it's overcome, okay?

20 MR. LESLIE: To the extent he relied on it for purposes of the
21 affidavit.

22 THE COURT: Exactly. Is everything clear?

23 MR. LEE: Yes, your Honor. I just wanted to clarify that that

1 relates to the documents that are encompassed by Appendix
2 4, and what we don't want to see is the Liquidator posture
3 with those documents and decide which ones they do or
4 don't want to produce. Our view is that all of those
5 documents are relevant. They were all identified as being
6 responsive to the document requests of the ACE Companies,
7 and they are not privileged ipso facto. They are relevant
8 to the issues before the Court.

9 THE COURT: Well, I don't know what is in them. I've given you
10 the guidelines. That's the order that I've made, that if
11 they are within the scope of discovery, as I've given that
12 to you earlier, that is to say, that the information was
13 relied upon, and, I guess, if the privilege wasn't waived,
14 if they are privileged, the privilege is overcome, and I'm
15 not even going as to whether or not they are waived.

16 MR. LESLIE: To the extent those documents were used by the JPL
17 in putting together the affidavit.

18 THE COURT: Relied upon, exactly.

19 MR. LESLIE: Okay.

20 THE COURT: Exactly, exactly.

21 MR. LEE: Thank you, your Honor.

22 MR. LESLIE: Thank you, your Honor.

23 (Discussion between counsel held off the record)