

# Lovells

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February 18, 2005

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Matter ref T0718.00023

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**RE: IN THE MATTER OF THE LIQUIDATION OF THE HOME INSURANCE COMPANY  
DOCKET NO. 03-E-0106**

Dear Mr. Smith:

Thank you for your letter of February 14, 2005 regarding the Liquidator's privilege logs.

We continue to be troubled by the positions that the Liquidator has taken, but we believe that it would be helpful to focus on the main areas that we believe remain unresolved.

First, the Liquidator has asserted the attorney-client privilege on the ground that certain documents, although not authored or received by an attorney, "reflect legal advice previously provided by counsel" or were created in connection with meetings or other communications with counsel. (The documents in question are referenced in paragraphs 1(b)-(d) and 3 of your February 14th letter, with the exception of document 95.) Even if the privilege may attach to documents that are not attorney-client communications *per se*, ACE cannot ascertain that the particular documents cited by the Liquidator contain the substance of attorney-client communications -- the minimum required by New Hampshire Rule of Evidence 502(b). Unless the Liquidator provides the basis for its privilege claims with respect to each such document, *in camera* review by the Court will be necessary.

Second, the Liquidator has claimed work product protection for certain documents. However, ACE cannot ascertain whether the various proceedings referenced in paragraph 6 of your February 14th letter constitute "litigations" or "trials" under New Hampshire Superior Court Rule 35(b)(2). Please explain the basis for the Liquidator's position.

Your February 14th letter, moreover, does not explain the bases for the Liquidator's withholding of the following documents: Documents 75, 83, 159, 177(2), and 178(1) from the December 21, 2004 Privilege Log; and Document 32(5) from the January 5, 2005 Privilege Log. Please do so. The Liquidator also has refrained from producing a redaction log, as required under New Hampshire law. We would expect that such a log be produced to us along with your responses to the foregoing queries.

Eric A. Smith, Esq.

February 18, 2005

In order to ensure there is no further delay in respect of this matter, we ask that you respond by February 25. We also look forward to receiving the Liquidator's interrogatory responses referenced in your email of February 4.

Very truly yours,

A handwritten signature in black ink, appearing to be "Gary S. Lee", written in a cursive style.

Gary S. Lee