

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**

**LIQUIDATOR'S SUR-REPLY IN OPPOSITION TO ACE COMPANIES' MOTION TO
STRIKE AFFIDAVIT OR COMPEL PRODUCTION OF DOCUMENTS BY EQUITAS**

Roger A. Sevigny, Commissioner of Insurance for the State of New Hampshire, as Liquidator of The Home Insurance Company, submits this sur-reply to respond to new arguments raised in the ACE Companies' Reply in Further Support of Motion to Compel Production of Documents by Equitas filed June 21, 2005 (the "Reply").

1. In the Reply, ACE mischaracterizes the commutation agreement between Equitas and Home and goes so far as to assert that "Equitas and Home had agreed to share AFIA recoveries." ACE Reply ¶¶ 1-2. This is not the case.

2. The Equitas/Home commutation was the subject of some confusion during the deposition of Rhyddian Williams (who was not involved in negotiating it, Williams Dep. at 151:23-152:3 (Exhibit A). The Liquidator sought to clarify matters by directing ACE to Jonathan Rosen, see Williams Dep. at 152:23-153:2, and providing ACE with a previously redacted portion of the commutation agreement. See ACE Reply Ex. 2. Mr. Rosen negotiated and in large part drafted that commutation agreement. Rosen Dep. 129:13-16 (Exhibit B). Despite Mr. Rosen's deposition testimony, however, ACE now mischaracterizes the commutation. While the commutation agreement refers to AFIA obligations (in order to exclude them from the commutation and require Equitas to prove its claims to obtain offset), it simply does not affect them. No AFIA obligations were commuted by this agreement. Indeed, ACE acknowledges this fact. Wamser Dep. 215:16-23, 216:8-12 (Exhibit C).

3. First, the commutation agreement does not commute AFIA obligations. As Mr. Rosen testified, it specifically excludes AFIA (as part of the Home UK Branch Business) from its scope. See ACE Reply Ex. 2, ¶ 7, first unnumbered paragraph (excluding Home U.K. Branch Business from commutation), ¶ 7(c) (defining “Home U.K. Branch Business” to include AFIA business); Rosen Dep. at 120:22-121:6, 121:20-122:4, 133:16-134:10.

4. Second, the commutation agreement makes clear that Equitas will need to prove any AFIA claims through the claim determination process. The commutation agreement provides for Equitas to withhold \$20 million from the commutation price as an offset credit based on asserted AFIA (Home U.K. Branch Business) claims. However, it expressly provides that Equitas must prove those claims and that if it does not do so by June 30, 2008 then Equitas must pay Home for the credited amount, with interest. See ACE Reply Ex. 2, ¶ 10; Rosen Dep. at 111:3-112:24, 121:7-19, 132:21-23. (ACE, of course, will be involved in the determination of Equitas’ claims under the Claims Protocol.)

5. Accordingly, there is no basis for ACE’s assertion that the commutation represents an agreement to “share” AFIA recoveries. See Rosen Dep. 125:24-126:2. The express terms of the commutation agreement and the testimony of Mr. Rosen confirming those terms show that AFIA was excluded from the commutation and that Equitas must prove its AFIA claims like any other cedent. ACE’s mischaracterization of the Home/Equitas commutation agreement certainly does not support further deposition of Mr. Williams, who has already made clear that he was not involved with the negotiation of that agreement. Williams Dep. 27:18-19, 151:23-152:3.

6. ACE’s further assertions concerning the deposition testimony of Mr. Rosen and the Appendix 4 documents in ACE Reply ¶ 3 are misreadings of the testimony and the documents (which instead referred to proposals or to the agreement ultimately reached with the

AFIA Cedents in the signed letter agreement). Indeed, ACE itself is in doubt, as it has recently served a second set of interrogatories on this issue to which the Liquidator will respond when due in mid-July. In any event, ACE could have examined Mr. Williams on this point based on the documents exchanged during the negotiations, all of which ACE had before Mr. Williams' deposition. If arguable inconsistencies in testimony or additional points that ACE did not raise were to provide grounds for additional deposition of witnesses previously deposed, the discovery process here would never end.

CONCLUSION

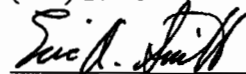
For the reasons stated above and in the Liquidator's (and Equitas') previous filings, the Court should deny the ACE Companies' motion.

Respectfully submitted,

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COMMISSIONER OF THE STATE OF NEW
HAMPSHIRE, AS LIQUIDATOR OF THE HOME
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June 23, 2005

Certificate of Service

I hereby certify that a copy of the foregoing Liquidator's Sur-Reply was sent, this 23rd day of June, 2005, by first class mail, postage prepaid to all persons on the attached service list.



Eric A. Smith

THE STATE OF NEW HAMPSHIRE

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