

**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 MOTION FOR PROTECTIVE ORDER  
AGAINST DEPOSITION OF PAULA ROGERS**

Pursuant to Superior Court Rule 35(c), Roger A. Sevigny, Commissioner of Insurance for the State of New Hampshire, as Liquidator ("Liquidator") of The Home Insurance Company ("Home"), hereby moves for a protective order directing that the deposition of "Paula Rogers, Liquidation Clerk" noticed by Century Indemnity Company, ACE Property and Casualty Insurance Company, Pacific Employers Insurance Company, and ACE American Reinsurance Company (the "ACE Companies") not be had. As reasons therefore, the Liquidator respectfully states as follows:

1. On May 5, 2005 – seven days before the status conference for discussion of deposition and discovery matters – the ACE Companies served, by mail, a Notice of Deposition for a deposition of "Paula Rogers, Liquidation Clerk" on June 22, 2005. A copy of the Notice of Deposition is attached as Exhibit A.

2. The proposed deposition of Ms. Rogers goes beyond the limited discovery permitted in this matter. Accordingly, the Court should issue a protective order directing that the deposition not be had.

3. The Order on Remand authorized discovery "limited to the necessity, reasonableness, and fairness" of the agreement with AFIA Cedents that is the subject of the Liquidator's motion for approval. Order on Remand at 13 (October 8, 2004). Ms. Rogers was

formerly the Insurance Commissioner of the State of New Hampshire and Liquidator of Home, but her last date of employment at the Insurance Department was August 15, 2003. She had no involvement in the conception of the Agreement, the development of the Liquidator's negotiation strategy, the negotiations with the ACE Companies or with the AFIA Cedents, or the drafting of the January 22, 2004 Agreement with AFIA Cedents. All of these activities took place after Ms. Rogers left office, and her deposition would thus have no bearing on the necessity, reasonableness and fairness of the Agreement. Proceeding with a deposition of Ms. Rogers is accordingly oppressive and creates undue burden and expense. See Superior Court Rule 35(c).

4. Last October, the ACE Companies stated that they sought to take the depositions of a number of individuals, including Ms. Rogers, "each of whom has provided an affidavit to this Court or in the UK proceedings regarding the Agreement with AFIA Cedents." ACE Companies' Proposed Discovery Schedule at 1-2 (October 1, 2004) (copy attached as Exhibit B). As applied to Ms. Rogers, however, this assertion is wrong. Ms. Rogers never submitted any affidavit "regarding the Agreement with AFIA Cedents" to any Court because she was not involved with the Agreement. She has not submitted any affidavit to this Court in connection with the Liquidator's February 11, 2004 motion for approval of the Agreement. Nor has she submitted any affidavit to the UK Court concerning the Agreement.

5. The ACE Companies may contend that a deposition is warranted because Ms. Rogers, as Rehabilitator of Home, submitted a witness statement to the UK Court on May 8, 2003 in support of the appointment of the Joint Provisional Liquidators. That witness statement, however, did not concern the Agreement, which was not conceived of until months later.

6. The proposed deposition of Ms. Rogers appears to be an impermissible attempt to obtain information exclusively pertaining to the UK proceeding. The ACE Companies have previously sought to inquire into the UK proceeding. For instance, the ACE Companies' document requests of the Liquidator Nos. 1-3 sought (a) documents concerning the assets of the Home UK Branch, (b) all documents concerning the appointment of the Joint Provisional Liquidators, and (c) all documents filed in the UK proceeding as well as "all documents concerning the witness statement of Paula Taft Rogers dated May 7, 2003." See Liquidator's Response to the ACE Companies' Document Request at 4-5 (November 24, 2004) (copy attached as Exhibit C). The Liquidator objected to these requests (except for documents generally identifying assets and their approximate value as of December 31, 2002). *Id.*

7. The ACE Companies did not press these issues in their motion to compel directed to the Liquidator. However, the proposed deposition of Ms. Rogers appears to be an effort to get at such matters in another way. Such inquiries are not relevant to the Agreement but rather appear to be an improper use of the discovery process in this proceeding to inquire concerning the UK proceeding. Depositions, however, may be taken only in connection with a pending case and are limited to matters relevant to that case. Superior Court Rule 35(b)(1); Vasoli v. Vasoli, 100 N.H. 200, 202 (1956) ("[T]he scope of the inquiry on the deposition was properly to be limited to matters relevant to the pending cause."); Amoskeag-Lawrence Mills, Inc. v. State, 101 N.H. 101, 103 (1957) (scope of depositions concerning a pending motion to set aside a verdict "is limited to matters 'bearing on the motion'"), quoting Swinglehurst v. Busiel, 84 N.H. 327, 328, 329 (1930) ("The statute gives no authority for taking depositions except in connection with a pending cause, and then only to the extent that they may be material at the trial of some issue arising during its course.").

8. In these circumstances, the Court should issue a protective order against the proposed deposition of Ms. Rogers. Superior Court Rule 35(c).

WHEREFORE, the Liquidator respectfully requests that this Court:

- A. Grant this motion for protective order;
- B. Enter an Order directing that the deposition of Ms. Rogers not be had; and
- C. Grant such other and further relief as justice may require.

Respectfully submitted,

ROGER A. SEVIGNY, INSURANCE  
COMMISSIONER OF THE STATE OF NEW  
HAMPSHIRE, AS LIQUIDATOR OF THE HOME  
INSURANCE COMPANY,

By his attorneys,

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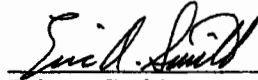
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May 9, 2005

Certificate of Service

I hereby certify that a copy of the foregoing Liquidator's Motion for Protective Order Against Deposition of Paula Rogers was sent, this 9th day of May, 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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