

**RACKEMANN, SAWYER & BREWSTER**

PROFESSIONAL CORPORATION  
COUNSELLORS AT LAW  
ESTABLISHED 1886

ONE FINANCIAL CENTER  
BOSTON, MASSACHUSETTS 02111-2659  
AREA CODE 617-542-2300  
TELECOPIER 617-542-7437

ERIC A. SMITH  
(617) 951-1127

E-MAIL: [cas@rackemann.com](mailto:cas@rackemann.com)

February 14, 2005

**BY OVERNIGHT COURIER**

Gary Lee, Esq.  
Lovells  
16<sup>th</sup> Floor  
900 Third Avenue  
New York, New York 10022

Re: In the Matter of the Liquidation of The Home Insurance Company

Dear Mr. Lee:

I write in response to your letter of January 19, 2005 concerning the Liquidator's privilege logs and document production. For convenience, the response is organized using the categories in your letter. As a result of our review of the documents identified in your letter, we are producing some additional documents and providing additional information below. I also enclose a revised version of the Liquidator's privilege log, in which updated information is shown in bold type. Please note that we have edited the legend to the privilege log in order to identify more thoroughly the individuals and entities involved.

**1. Links to an Attorney**

**(a) Documents being produced.** We have reviewed the documents that you listed on Exhibit I. The following documents previously included on the privilege logs are now being produced and are Bate-stamped H02543 through H02696:

**December 21, 2004 Privilege Log**

13(1) (redacted)	23(3)	24(2)
39(2)	41	61
91	134(3)	135(2)
164(2)	166(3)	223(3)
224(2)	225(1)	225(2)
262(4)	263(2)	307(3)

**January 5, 2005 Privilege Log**

11(3)	32(1)-(3)	59(1)-(2)
60(2)-(3)	63(2)	64(2)

**(b) Documents reflecting legal advice.** The following email messages are being withheld because they reflect legal advice previously provided by counsel:

**December 21, 2004 Privilege Log**

13(1) (redacted)	136(1)	179(1)
203(2)	301(1)	

**January 5, 2005 Privilege Log**

24(1)	24(2)	25(3)
25(4)	59(3)	60(4)
84(1)		

**(c) Notes concerning communication with counsel.** The following documents are being withheld as they are notes, or documents that contain notes, prepared for and used during, taken during, or made after a meeting or other communication with counsel:

**December 21, 2004 Privilege Log**

31	32	35
37	47	67
82	84	87
93	94	118
119	149	161
247	265-72	274

**(d) Drafts reflecting legal advice.** The following are withheld because they are draft documents that reflect legal advice:

**December 21, 2004 Privilege Log**

35	37	43
44	50	66
95	117	118
119	121	161
187(3)	247	274
275	357	

(e) **PR.** PR stands for Peter Roth, an attorney in the New Hampshire Attorney General's Office and counsel to the Liquidator. Mr. Roth is included on the updated legend, and he was involved with the following documents, among others:

**December 21, 2004 Privilege Log**

60	106(1)	300
338(1)	338(2)	339
340(1)	345(1)	345(2)

**January 5, 2005 Privilege Log**

78(1)
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(f) **Documents without text.** The following documents contain no text. They are merely blank emails that forward attached communications that are otherwise privileged:

**December 21, 2004 Privilege Log**

136(2)	177(1)
179(2)	341(1)

**January 5, 2005 Privilege Log**

33(1)	84(2)
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**2. Subject Matter Descriptions**

In response to your comments, we have revised many of the subject matter descriptions on the privilege log. Please refer to the updated privilege log which is attached. New descriptions have been provided to substitute for the following entries, which tracked the "re" line in the email at issue but arguably are insufficiently informative:

- AFIA Updates
- Nationwide
- Gernot
- Home UK Branch
- UK Branch
- AFIA
- Home
- Various Updates
- Conference Call

**3. Notes Prepared by Non-Lawyers**

You identified four document entries on the December 21, 2004 privilege log that mention notes prepared for discussions with counsel. Both documents 35(1), a draft letter to AFIA Cedents, and 95, a draft letter received from Unionamerica, contain handwritten notes made in connection with communications with counsel. Even without these notes, document 35 reflects legal advice and is therefore protected by the attorney-client privilege. Document 95 was previously produced without the handwritten notes. See H01274. Documents 82 and 149

are privileged as they are notes that were prepared for and used in discussions with counsel. These documents reflect communications with counsel for the purpose of obtaining legal advice and are therefore protected by the attorney-client privilege.

#### **4. Author or Recipient Not Identified**

Some edits have been made to the privilege log based on your Exhibit 4. To the extent the information is available, the privilege log now reflects author or recipient names. No specific addressee has been identified on the privilege log for many draft documents because the documents do not themselves contain this information. However, the privilege log notes the files in which the documents were found (e.g., "Files of Peter A. Bengelsdorf") and thus the recipient.

#### **5. Dates of Creation**

The privilege log now reflects dates for the seven documents that you listed on Exhibit 5. Additional information on each of these documents is discussed in the following section.

#### **6. Work Product**

Documents listed on your Exhibit 6 were created in anticipation of or as part of actual litigation or were emails discussing such documents. The US/UK Liquidation Procedures Coordination Matrix (2, 3, 8, 9, 42, 44, 48, 66, 285, 343-44, 346, 357) was created by Clifford Chance and in part reflects advice from Rackemann, Sawyer & Brewster. The Matrix was prepared in anticipation of a potential application to the UK court. Certain memos and draft letters containing the advice of counsel were prepared in anticipation of potential litigation over various issues, as noted on the privilege log (4, 5, 45, 46, 55, 69, 159, 167-69, 188/234, 243, 321, 322, 347-50). The "Lovells letter" was Clifford Chance's draft response to Lovells' letter of September 16, 2003, and concerned potential litigation over cut-throughs (71, 76, 165, 245, 273, 286). The draft letter concerning the Assumption Agreement, also referred to as the joint letter to ACE/INA, was a letter to ACE/INA regarding the Assumption Agreement and was drafted by Rackemann, Sawyer & Brewster in anticipation of litigation that would arise if parties attempted cut-throughs (70, 73, 74, 170, 172, 274, 351-56). Draft motions, affidavits and orders were prepared in the Home liquidation proceeding in connection with the motion for approval of the proposed agreement with the AFIA Cedents (1, 7, 97-108, 183-85, 281, 282, 288-92, 299). (Document 6 was inadvertently identified as work product, a designation which has now been deleted.).

#### **7. Redacted Documents Not Listed on Any Log**

With the exception of the documents discussed below, all redactions were made on the basis of the attorney-client privilege. Portions of the following documents were redacted because they contained non-responsive, confidential information with respect to a separate matter:

**December 16, 2004 Production**

<u>Page</u>	<u>Regarding</u>
H00735	commutation agreement
H01910	negotiations for unrelated transaction
H01913	employee compensation program
H01915	special deputy compensation
H01924	commutation agreement
H01964	same as H01924

\* \* \*

**Documents removed from privilege log.** In the course of our review of the privilege logs and documents, the following documents have been removed from the December 21, 2004 privilege log:

<u>Document</u>	<u>Reason</u>	<u>Document</u>	<u>Reason</u>
13	now produced in redacted form	135	now produced in redacted form
23	now produced in redacted form	164	now produced in redacted form
24	now produced in redacted form	166	now produced in redacted form
39	now produced in redacted form	223	now produced in redacted form
41	now produced	224	now produced in redacted form
61	now produced	225	now produced in redacted form
75	duplicate entry of #47	234	duplicate entry of #188
83	duplicate entry of #87	262	now produced in redacted form
91	now produced	263	now produced in redacted form
134	now produced in redacted form	307	now produced in redacted form

The following documents from the January 5, 2005 Privilege Log are now being produced in redacted form: 11, 32, 59, 60, 63, 64.

**Documents added to privilege log.** The following documents were inadvertently omitted from the December 21, 2004 privilege log and have now been added: 217(1) & (2), 359.

Very truly yours,



Eric A. Smith

Enclosures