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January 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:

This letter will respond to your letter of December 20, 2004 concerning the Liquidator's responses to the interrogatories and document requests propounded by the ACE Companies. For convenience, I will address your points in numerical order, although many of the points essentially repeat the same issues.

**Interrogatory Responses**

**1. General Objections**

1.1 The ACE interrogatories contained voluminous boilerplate instructions and definitions, and the Liquidator objects to responding to the extent those instructions and definitions exceed the discovery obligations provided by the New Hampshire Superior Court Rules. The Liquidator identified four significant objections in General Objection 2 subparts (a) through (d). These general objections apply to all of the Liquidator's responses. While we are not aware of other issues covered by General Objection 2, that objection serves to preserve the Liquidator's position should it later emerge that the ACE Companies rely on obscure parts of the instructions and definitions or have an interpretation of the instructions and definitions different from the Liquidator's.

1.2 In the interrogatories, the ACE Companies set forth boilerplate definitions of "identify" and "relating to" (and similar terms) that exceed any reasonable bounds and could be construed --

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by far-fetched chains of “relevance” – to seek production of essentially all information or documents concerning the American Foreign Insurance Association. The Liquidator stated in General Objection 2(a) that he will produce documents referred to in the interrogatory responses in accordance with the Liquidator’s document response. The Liquidator set forth his construction of “relating to” (and similar terms) in General Objection 2(b). This construction is reasonable and mirrors that used in certain federal local rules. The positions set forth in these objections appropriately define the scope of discovery.

1.3 In General Objection 2(c), The Liquidator objected to the broad definition of “document” and “electronic data” and stated that he would produce documents in accordance with the Liquidator’s document response. That response provided in General Objection 2(b) that the Liquidator would produce available emails and investigate available backup. The Liquidator has produced emails existing on the computer systems of the Special Deputy Liquidator, The Home Insurance Company, the New Hampshire Insurance Department, and Ernst & Young (UK) (the Joint Provisional Liquidators). The Liquidator has also inquired concerning available archived/backup information. The Special Deputy Liquidator does not have backup (his emails are maintained by AOL which deletes unsaved emails after thirty days). The Home Insurance Company switched computer systems (including servers) as of January 1, 2004. Responsive e-mails sent to or from Jonathan Rosen and to or from Karl Moller from September 2003 to February 11, 2004 that are available from daily backup tapes have been produced. E-mails available from the existing backup at the New Hampshire Insurance Department have similarly been produced. Ernst & Young (the Joint Provisional Liquidators) have advised that backup material does not exist. This production is appropriate and more would be unduly burdensome.

1.4 The Liquidator objected to the definitions and instructions in the ACE Companies’ interrogatories to the extent they purported to impose an obligation to produce information from such independent professionals as attorneys. This issue (which is of importance principally in connection with the burden of document production) was not addressed in Kearsarge Computer, Inc. v. Acme Staple Co., Inc., 116 N.H. 705, 707 (1976), which merely remarked in dicta that the duty to investigate is “not unlimited” but that a party must find out what is in his own records and what is within the knowledge of his agents and employees concerning the transaction or occurrence. The Liquidator’s answers to interrogatories comport with this standard. As stated in General Objection 2(d), the answers are based on information from the Special Deputy Liquidator and liquidation staff involved in the subject matters of the interrogatories (Home’s Chief Operating Officer and Home’s Chief Actuary) and the Liquidator and pertinent staff at the New Hampshire Insurance Department (the Deputy Commissioner). Counsel obviously were also involved in the preparation of the interrogatory responses. With respect to the Joint Provisional Liquidators in the ancillary UK proceeding, the Liquidator notes that they are independent professionals appointed by the High Court of Justice in London and responsible to that Court in accordance with the terms of their appointment order. Thus, while they have a common interest and have worked with the Liquidator in this matter, they are not acting as his

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agents. Further, as non-parties, they have no obligation to respond to interrogatories. However, and as stated in General Objection 2(d), the Liquidator responded not only based on information from the persons noted above but also based on "information received from the Joint Provisional Liquidators".<sup>1</sup>

## 2. Specific Objections

2.1 ACE's interrogatory 2 seeks detailed descriptions of assets of the Home UK Branch. While assets of the UK Branch were generally referred to in the Motion, that does not place them in dispute or make their details relevant to the necessity, reasonableness, and fairness of the Agreement. The only potential relevance of the assets is that they could be the subject of a "walling off" argument, and even then the only relevance is that such assets exist in some significant amount. The Liquidator so construed the interrogatory and appropriately answered by generally describing the assets and their aggregate value as reported in financial statements prepared by the ACE Companies' affiliate, ACE-INA. The Liquidator also produced the BAFCO Agreements and the Home UK Branch financial statements filed with the FSA. Providing details concerning the assets and financial statements (which are likely in ACE-INA's possession) would also be unduly burdensome. This answer and the objection that more detail is not relevant are appropriate.

2.2 The Liquidator objected to interrogatory 5 as overbroad and unduly burdensome on the ground that it asked for a description of "all communications." You correctly note that the interrogatory referred to all communications "regarding the Agreement," and the objection implicitly reflected that qualifier. As stated in the objection, "[t]he negotiation of the Agreement was a three month process beginning after the first Informal Creditors' Committee meeting on October 21, 2003 and running through the circulation of the final Agreement for signature on January 23, 2004. It involved representatives and/or counsel for the nine members of the Committee, the Joint Provisional Liquidators, and the Liquidator and many written and oral communications." In the circumstances, a synopsis of the principal communications and production of responsive, non-privileged documents concerning the Agreement and its negotiation (which would include the written communications with the AFIA Cedents or other creditors) is an appropriate response. Further, the Liquidator reasonably objected to responding with respect to communications after February 11, 2004, when the Motion for approval of the Agreement was served. Subsequent communications are not relevant to the necessity, reasonableness or fairness of the Agreement and responding with respect to them would be

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<sup>1</sup> Your letter does not accurately reflect the exchange between counsel with respect to documents from the Joint Provisional Liquidators. Your email of November 11, 2004 asked whether the Liquidator would be producing documents from the Joint Provisional Liquidators, and my email of November 15, 2004 responded that the Liquidator had requested and received documents from the Joint Provisional Liquidators and would make production in accordance with the Liquidator's written response to ACE's document request. The Liquidator has done so.

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unreasonably burdensome (as the request would involve multiparty negotiations over the scheme document itself, which were protracted). The Liquidator has produced or incorporated by reference post-February 11, 2004 documents on which he relies as to reasonableness (the affidavits, letter from the FSA, and exhibit concerning the working of the Agreement on certain assumptions). The Agreement has not changed (the extension letters necessitated by the delay caused by the objectors have been submitted to the New Hampshire Court as exhibits to the Liquidator's reports, with copies to the ACE Companies). Further, the application to the English Court for permission to convene the creditors meeting to approve the scheme which included the scheme and explanatory statement have previously been provided to the ACE Companies.

2.3 The Liquidator objected to interrogatory 6 in part because any offers to other creditors on substantially similar terms would shed no light on the necessity, reasonableness or fairness of the Agreement. Further, as discussed in paragraph 2.4 below, the question of consistency with the priority statute raised in your letter has already been addressed. However, as stated in the response itself, "Notwithstanding this objection, the Liquidator responds that there have been no such communications."

2.4 The Liquidator objected to interrogatory 9 (and other interrogatories concerning the legality of the payments contemplated by the Agreement) because the issue of the consistency of the payments and the New Hampshire priority statute is a legal issue that has already been addressed. In the letter you assert that "the legality of payments made pursuant to the Agreement is relevant to the necessity, reasonableness and fairness of the Agreement" because "[i]f the Agreement is deemed to violate RSA 402-C:44, it would not be 'fair and reasonable.'" That issue is beyond the scope of discovery permitted by the Order on Remand. First, the legal issues have been extensively brief to the Superior Court (and once to the Supreme Court) and the Liquidator, the ACE Companies and BMC have agreed the issue can properly be decided without submission of further evidence or briefing. Order on Remand at 6. Second, the Superior Court has already decided the issue adversely to the ACE Companies. Order on Remand at 6-10; April 29 Order. The ACE Companies cannot relitigate this question in the guise of necessity, fairness and reasonableness. (If a response were required, the Liquidator would incorporate by reference the Liquidator's briefs on the issue previously filed with the Superior Court and the New Hampshire Supreme Court.)<sup>2</sup>

2.5 The Liquidator objected to interrogatory 14 because it in essence asks for an explanation of the Liquidator's position that payments to AFIA Cedents are administrative costs within RSA 402-C:44, I. The letter acknowledges that this interrogatory concerns the "characterization" of the payments to AFIA Cedents as "administrative expenses." As set forth in paragraph 2.4 above, that issue is beyond the scope of discovery permitted by the Order on Remand. The letter

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<sup>2</sup> In re Boston & Providence Railroad Corp., 673 F.2d 11 (1<sup>st</sup> Cir. 1982), and In re Estate of Indian Motorcycle Mfg., Inc., 299 B.R. 8 (D. Mass. 2003), do not address these issues. Even if they did, they would be irrelevant as the legal issues have already been addressed.

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suggests that the interrogatory also sought an explanation of the reasons for the "magnitude" of the payment (that is, the specific percentage of Net Proceeds provided for in the Agreement). That is not apparent from the interrogatory, and in any event, the Liquidator has addressed that issue in the responses to interrogatories 10, 11, 15, 18, and 19.

2.6 The Liquidator objected to interrogatory 16 because the validity of the AFIA Cedents' claims against Home (not, as your letter has it, against ACE) will be determined through the claims determination process provided for by RSA 402-C:41 and C:45, as implemented by the Claims Procedures Order issued December 19, 2003 (as amended) and the Protocol with Century approved by the Court on November 12, 2004. The validity of the AFIA Cedents' claims is thus a matter for future determination that has no bearing on the fairness of the Agreement except, as stated in the Liquidator's response to the interrogatory, to note that there is reason to believe that there are substantial valid claims based on the Home UK Branch filing with the FSA as of December 31, 2002 made by ACE-INA. In the event there were no valid claims, there would be no recovery from Century (or CIRC) and no payment to AFIA Cedents under the Agreement. The interrogatory is vague, overbroad and unduly burdensome because the question whether claims by AFIA Cedents "are valid and/or would lead to the collection of reinsurance from any of the ACE Companies" could be read to include various things (such as discussions concerning the Joint Provisional Liquidators' inspection of ACE-INA's claim handling, amounts due on, or defenses to specific claims or actuarial reviews of the AFIA book) that have no bearing on the Agreement. The reference to "matters that are the potential subject of asset collection discussions or proceedings" is to the possibility that the Liquidator may in the future need to bring proceedings against Century or others to recover amounts due with respect to allowed claims in the liquidation.

2.7 The Liquidator objected to interrogatory 17 because notice to creditors or any other "potentially impacted" entity is not relevant to the fairness of the Agreement. Nonetheless, the Liquidator specifically incorporated the answers to interrogatories 5(b) (concerning communications with creditors other than the AFIA Cedents and notice of the Motion) and 12 (concerning discussions with the ACE Companies). These answers also answer interrogatory 17.

2.8 The Liquidator objected to interrogatory 20, seeking the basis for the Liquidator's position that payments to AFIA Cedents under the Agreement qualifies as an administrative expense, for the reasons explained in paragraph 2.4 above. (If a response were required, the Liquidator would incorporate by reference the Liquidator's briefs on the issue previously filed with the Superior Court and the New Hampshire Supreme Court.)

2.9 The Liquidator objected to interrogatory 21, also concerning the legality of payment to AFIA Cedents, for the reasons explained in paragraph 2.4 above. (If a response were required, the Liquidator would incorporate by reference the Liquidator's briefs on the issue previously filed with the Superior Court and the New Hampshire Supreme Court.)

2.10 Interrogatory 23 is a more general version of interrogatory 2, concerning assets of the Home UK Branch. The Liquidator appropriately objected to it for the reasons explained in paragraph 2.1 above.

2.11 The Liquidator objected to interrogatory 24 as overbroad because it asks for the identities of any person with any knowledge of the subjects covered by the interrogatories and answers. It is reasonable to respond, as the Liquidator did, with the identities of the principal persons knowledgeable concerning those subjects.

2.12 It is appropriate to incorporate answers to other interrogatories by reference when they respond to the question asked. It is particularly appropriate here, as interrogatory "25" is identical to interrogatory 22 (except for a correction of a typo in the word "contend").

### **Document Response**

#### **3. General Objections**

3.1 The ACE document requests contained voluminous boilerplate instructions and definitions, and the Liquidator objects to responding to the extent those instructions and definitions exceed the discovery obligations provided by the New Hampshire Superior Court Rules. The Liquidator identified three significant objections in the General Objection 2 subparts (a) through (c). These general objections apply to all of the Liquidator's responses. While we are not aware of other issues covered by General Objection 2, the objection serves to preserve the Liquidator's position should it later emerge that the ACE Companies rely on obscure parts of the instructions or definitions or have an interpretation of the instructions and definitions different from the Liquidator's.

3.2 In the document requests, the ACE Companies set forth boilerplate definitions of "document" and "electronic data" and instruction D that are overbroad and unduly burdensome to the extent they seek general searches for electronic data, especially deleted material. In General Objection 2(b) the Liquidator stated that he would produce emails existing on the Home liquidation's computer system and that of the New Hampshire Insurance Department and investigate available backup. The Liquidator has now produced emails existing on the computer systems of the Special Deputy Liquidator, The Home Insurance Company, the New Hampshire Insurance Department, and Ernst & Young (UK) (the Joint Provisional Liquidators). The Liquidator has also inquired concerning available archived/backup information. The Special Deputy Liquidator does not have backup (his emails are maintained by AOL which deletes unsaved emails after thirty days). The Home Insurance Company switched computer systems (including servers) as of January 1, 2004. Responsive e-mails sent to or from Jonathan Rosen and to or from Karl Moller from September 2003 to February 11, 2004 that are available from

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daily backup tapes have been produced. E-mails available from the existing backup at the New Hampshire Insurance Department have similarly been produced. Ernst & Young (the Joint Provisional Liquidators) have advised that backup material does not exist. This production is appropriate and more would be unduly burdensome.

3.3 The Liquidator objected to the definitions and instructions in the ACE Companies' document requests to the extent they purported to impose an obligation to produce documents from such independent professionals as attorneys. This issue was not addressed in Kearsarge Computer, 116 N.H. at 707, which merely remarked in dicta that the duty to investigate (for interrogatories) is "not unlimited" but that a party must find out what is in his own records and what is within the knowledge of his agents and employees concerning the transaction or occurrence. The Liquidator's response to the document requests is appropriate. As stated in General Objection 2(c), the document production is based on a search of files at the New Hampshire Insurance Department, the files of the Special Deputy Liquidator, and files of liquidation staff involved in the subject matters of the requests (Home's Chief Operating Officer and Home's Chief Actuary). Production of outside counsel's files is not required and, given privilege and work product issues, would be unduly burdensome. With respect to the Joint Provisional Liquidators in the UK provisional liquidation proceeding, the Liquidator notes that they are independent professionals appointed by the High Court of Justice in London and responsible to that Court in accordance with the terms of their appointment order. Thus, while they have a common interest and have worked with the Liquidator, they are not acting as his agents in this matter. Nor are they parties to this proceeding with an obligation to respond to document requests. However, and as stated in General Objection 2(c), the Liquidator requested that the Joint Provisional Liquidators provide documents within the scope of the Liquidator's responses and has produced documents received from the Joint Provisional Liquidators in accordance with the Liquidator's responses (documents H 01131 through H 01905).<sup>3</sup>

3.4 The Liquidator has reasonably objected in General Objection 3 to producing documents created after February 11, 2004, when the Motion for approval of the Agreement was served. Subsequently created documents are not relevant to the necessity, reasonableness or fairness of the Agreement and their production or logging for withholding purposes would be unreasonably burdensome. (The request would involve documents with respect to all the various filings by the ACE Companies, BMC and the Liquidator in this proceeding and the appeals to the New Hampshire Supreme Court, and the negotiations over the scheme document itself, which were protracted). The Liquidator has produced or incorporated by reference post-February 11, 2004

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<sup>3</sup> Your letter does not accurately reflect the exchange between counsel with respect to documents from the Joint Provisional Liquidators. Your email of November 11, 2004 asked whether the Liquidator would be producing documents from the Joint Provisional Liquidators, and my email of November 15, 2004 responded that the Liquidator had requested and received documents from the Joint Provisional Liquidators and would make production in accordance with the Liquidator's written response to ACE's document request. The Liquidator has done so.

documents on which he relies (the affidavits, letter from the FSA, and the exhibit concerning the working of the Agreement on certain assumptions all previously filed with the Court). The Agreement has not changed (the extension letters necessitated by the delay caused by the objectors have been submitted to the New Hampshire Court as exhibits to the Liquidator's reports, with copies served on the ACE Companies). Further, the Liquidator has previously provided the ACE Companies with the application to the English Court for permission to convene the creditors meeting to approve the scheme which included the scheme and explanatory statement. If the Agreement is approved by the New Hampshire Court, the scheme itself will be the subject of further proceedings in the English Court.

3.5 The Liquidator has reasonably objected in General Objection 4 to producing documents created before September 1, 2003 as not relevant and unduly burdensome. Contrary to the assertion in your letter, the Liquidator did not contemplate some form of arrangement regarding alternative means of recovery in relation to the AFIA Cedents "months before" September 2003. In September 2003, the Liquidator and Joint Provisional Liquidators discussed a potential three-corner arrangement involving the ACE Companies, AFIA Cedents and Home. See Liquidator's answer to BMC interrogatory 1. The possibility of an arrangement directly with the AFIA Cedents was considered thereafter, and the negotiation of the Agreement only began after the first Informal Creditors' Committee meeting on October 21, 2003. See Liquidator's answer to ACE interrogatory 5. September 1, 2003 is a reasonable starting point for discovery.

#### **4 Specific Objections**

4.1 ACE's document request 1 seeks "all documents" concerning the assets of the Home UK Branch that might be repatriated. The Liquidator responded by producing documents generally identifying such assets and their approximate values as estimated as of December 31, 2002 (the BAFCO Agreements and the Home UK Branch statement to the FSA prepared by ACE-INA). This is appropriate. While assets of the UK Branch were generally referred to in the Motion, that does not place them in dispute or make their details relevant to the necessity, reasonableness, and fairness of the Agreement. The only potential relevance of the assets is that they could be the subject of a "walling off" argument, and even then the only relevance is that such assets exist in some significant amount. The potentially voluminous documents concerning the BAFCO Agreements (entered in the early 1980's) and the assets encompassed by the Home UK Branch financial statements are not relevant.

4.2 The Liquidator appropriately objected to the ACE Companies' request 2 seeking all documents concerning the appointment of the Joint Provisional Liquidators. The fact that the Joint Provisional Liquidators played a role in the negotiation and execution of the Agreement does not somehow make their appointment a subject of inquiry relevant to the necessity, reasonableness or fairness of the Agreement.



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4.3 The Liquidator appropriately objected to the ACE Companies' document request 3 for all documents filed in the English provisional liquidation proceeding for the Home UK Branch and all documents concerning the witness statement supporting the application for appointment of the Joint Provisional Liquidators (which was addressed in paragraph 4.2 above). Contrary to the contention in your letter, the Motion's reference to the UK provisional liquidation does not "concede, in effect, the relevance of the English liquidation" and make all matters filed in that proceeding (some of which are subject to a confidentiality there) a subject of inquiry. The Liquidator notes that the submissions to the High Court of Justice concerning the convening of a creditors meeting concerning the proposed scheme were previously made available to the ACE Companies.

4.4 The Liquidator reasonably construed document request 11 to seek documents concerning discussions with the ACE Companies regarding the Agreement and not to encompass pre-Agreement discussions with the ACE Companies in September 2003 about a potential three corner agreement. This was a matter of clarification only, as the latter documents were produced in response to BMC's document request 1. The Liquidator objected that discussions with the ACE Companies regarding the Agreement are not relevant to its fairness, and that objection was appropriate. However, as the Liquidator stated in his response, "Notwithstanding this objection, the Liquidator will produce responsive documents." The Liquidator has done so.

4.5 The Liquidator objected to document request 16 (and other requests concerning the legality of the payments contemplated by the Agreement) because the issue of the consistency of the payments and the New Hampshire priority statute is a legal issue that has already been addressed. The propriety of the treatment of the payments under the Agreement as administrative costs is beyond the scope of discovery permitted by the Order on Remand. First, the Liquidator, the ACE Companies and BMC have agreed the issue can properly be decided without submission of further evidence or briefing. Order on Remand at 6. Second, the Superior Court has already decided the issue adversely to the ACE Companies. Order on Remand at 6-10; April 29 Order. The ACE Companies cannot relitigate this question in the guise of necessity, fairness and reasonableness. (If a response were required, the Liquidator would incorporate by reference the Liquidator's briefs on the issue previously filed with the Superior Court and the New Hampshire Supreme Court.)

4.6 The Liquidator objected to document request 17 seeking documents concerning the Liquidator's position that payment to the AFIA Cedents does not violate RSA 402-C:44. In the letter you assert that "the legality of payments made . . . under the Agreement is plainly relevant to the necessity, reasonableness and fairness of the Agreement" because "[i]f the Agreement is found to violate RSA 402-C:44, it is not likely to be deemed 'fair and reasonable.'" As this assertion acknowledges, the request concerns the legal issue of compliance with RSA 402-C:44. That issue is beyond the scope of discovery permitted by the Order on Remand for the reasons set forth in paragraph 4.5 above. (If a response were required, the Liquidator would incorporate

by reference the Liquidator's briefs on the issue previously filed with the Superior Court and the New Hampshire Supreme Court.)

4.7 The Liquidator objected to document request 19, seeking documents supporting the Liquidator's position that payments are administrative expenses under RSA 402-C:44, I, for the reasons set forth in paragraphs 4.5 and 4.6 above. (If a response were required, the Liquidator would incorporate by reference the Liquidator's briefs on the issue previously filed with the Superior Court and the New Hampshire Supreme Court.)

4.8 The Liquidator objected to document request 20, concerning any compensation any persons involved with the Agreement would receive as a result of the filing of claims by AFIA Cedents, as not relevant. The necessity, reasonableness and fairness of the Agreement is not affected by any such compensation, and this request is beyond the scope of discovery permitted by the Order on Remand.

4.9 The Liquidator objected to document request 22 concerning notice to creditors. However, as stated in the Liquidator's response, "Notwithstanding this objection, the Liquidator will produce responsive documents." The Liquidator has done so.

4.10 The Liquidator objected to document request 25 concerning documents with respect to whether the Agreement creates subclasses. In the letter you assert that the Agreement "will necessarily require an alteration of the order of priority of payment to Home's creditors, giving certain classes of creditors a benefit that would not otherwise be available to them in case of strict compliance with RSA 402-C:44." As this acknowledges, the request concerns the legal issue of compliance with RSA 402-C:44. That issue is beyond the scope of discovery permitted by the Order on Remand for the reasons set forth in paragraphs 4.5 and 4.6 above. (If a response were required, the Liquidator would incorporate by reference the Liquidator's briefs on the issue previously filed with the Superior Court and the New Hampshire Supreme Court.)

4.11 Document request 26 requested documents referred to in the Liquidator's responses to ACE's interrogatories and documents consulted or created in response to the responses to interrogatories. The Liquidator responded that he will produce documents referred to in the interrogatory responses but objected to producing documents consulted or created in connection with those responses. Any documents created in connection with the responses would be privileged (including work product), and the scope of discovery should not be enlarged to include documents that might have been consulted in connection with the responses but have not otherwise been requested. No non-privileged documents that are responsive to any other request have been withheld based on this objection alone.

4.12 Document request 27 sought all documents reflecting communications between the AFIA Cedents. The Liquidator incorporated his responses to the preceding 26 requests and

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otherwise objected. The Liquidator thus agreed to produce documents reflecting communications between AFIA Cedents that concern the Agreement, negotiations regarding the Agreement, and the other non-objected to topics that are within the scope of discovery permitted by the Order on Remand. To the extent the Liquidator may possess other communications between AFIA Cedents, they are not relevant and do not become so merely because they are between AFIA Cedents. Your letter refers to communications between AFIA Cedents that concern their "underlying claims." To the extent the Liquidator may possess such documents, a communication between cedents concerning claims against Home is not of itself relevant. As noted in paragraph 2.6 above, the underlying claims will be the subject of a claims determination process under the Claims Procedures Order and the Protocol with Century. Locating any such irrelevant communications would also be unduly burdensome.

4.13 Document request 28(i) requested documents regarding "the amount of claims filed by Class II creditors." The Liquidator objected on grounds of relevance because the overwhelming number of the proofs of claim filed with the Liquidator were filed in the few weeks prior to the claim filing deadline of June 13, 2004, long after the Agreement was entered in January 2004. Further, the request appears to seek amounts claimed on proofs of claim. It is difficult to meaningfully summarize the proofs of claim in advance of the claim determination process noted in paragraph 2.6 above because (a) the proofs of claim that quantify the claim may be overstated or understated, (b) most proofs of claim do not quantify the amount claimed, and (c) an individual proof of claim may involve many different claims and claimants. The assertion in your letter that the request "relates to the contemplated recoveries by Home's creditors and their validity under the priority mandate of RSA 402-C:44" does not articulate any theory of relevance. The Liquidator objected on grounds of burden because, to the extent the ACE Companies seek the proofs of claim filed by class II creditors, they appear to seek voluminous proofs. Priorities and amounts have not been determined as the process of determining claims has only recently commenced, although preliminary priority classifications may have been made. With respect to request 28(ii) and (iii), the Liquidator has produced the documents reflecting the Spring 2003 analysis of a potential distribution percentage to policyholder level (class II) creditors. (As the distribution percentage for class II was less than 100%, the analysis implicitly indicated no distribution to class III creditors.) There was no subsequent written analysis before February 11, 2004.

4.14 ACE's document request seeks "all documents" concerning the assets of the Home UK Branch and the "specific location" of each such asset. The Liquidator responded by incorporating his response to ACE document request 1, under which he produced documents generally identifying the assets subject to repatriation and their approximate values as estimated as of December 31, 2002 (the BAFCO Agreements and the Home UK Branch statement to the FSA prepared by ACE-INA). This is appropriate. While assets of the UK Branch were generally referred to in the Motion, that does not place them in dispute or make their details relevant to the necessity, reasonableness, and fairness of the Agreement. The only potential

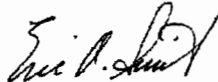
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relevance of the assets is that they could be the subject of a "walling off" argument, and even then the only relevance is that such assets exist in some significant amount. The potentially voluminous documents concerning the BAFCO Agreements (entered in the early 1980's) and the assets encompassed by the Home UK Branch financial statements are not relevant. Indeed, as ACE-INA prepared the financial statement, it should have many documents concerning these irrelevant subjects itself.

If you wish to discuss any of these matters, please give me a call to arrange a convenient time.

Very truly yours,

A handwritten signature in black ink, appearing to read "Eric A. Smith". The signature is written in a cursive style with a large, stylized initial "E".

Eric A. Smith