

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 OPPOSITION TO ACE COMPANIES' MOTION
IN LIMINE ON PRECLUDING EVIDENCE POST-AGREEMENT**

Roger A. Sevigny, Commissioner of Insurance for the State of New Hampshire, as Liquidator ("Liquidator") of The Home Insurance Company ("Home"), hereby opposes the ACE Companies' Motion in Limine on Precluding Evidence Post-Agreement. The motion seeks to impose a "cut off" date for evidence of February 11, 2004, when the Liquidator's motion for approval of the Agreement with AFIA Cedents was served. The motion seeks an absolute ruling without regard to any particular proposed evidence. Such a ruling – essentially on relevance grounds – is abstract and inappropriate. The Liquidator submits that the better course is for the Court to wait and see what evidence concerning the post-February 11, 2004 period is offered (the Liquidator does not anticipate much if any), and then rule based on the particular evidence in an actual context. In any event, the premise for ACE's motion is unsupported. There was no agreement between ACE and the Liquidator to limit discovery to pre-February 11, 2004 matters; the Liquidator provided document and interrogatory discovery after that date in several areas; and ACE deposed the Liquidator's potential witnesses without any temporal cut off. As further reasons, the Liquidator states as follows:

1. The ACE Companies seek a general ruling barring the introduction of all evidence after February 11, 2004. They do not specify any particular evidence that they want to exclude. The request is thus hypothetical and premature. The Court should not rule on evidentiary matters, particularly relevance issues, in the abstract.

2. As the Court has recently reiterated, the focus of the hearing is upon whether the Agreement with AFIA Cedents is necessary, fair and reasonable and upon the rationales of the Liquidator and JPL in negotiating and reaching the Agreement. Order on Discovery at 1 (June 28, 2005). To the limited extent the Liquidator may offer post-February 11, 2004 evidence, the relevance of that evidence to these issues is best assessed when the particular evidence is presented in a factual context. Accordingly, the Court should not rule on the admissibility of unspecified evidence on ACE's motion in limine but should see what evidence concerning the post-February 11, 2004 period is offered, and then rule based on the particular evidence in an actual context.

3. In any event, the premise of ACE's motion – that there was a blanket objection to post-February 11, 2004 discovery and acceptance and reliance on that by ACE – is not supported. The Liquidator did object to answering one interrogatory as to communications with AFIA Cedents after that time (see ACE Motion Ex. A at 11) and producing documents generally from the post-February 11, 2004 period (see ACE Ex. B at 3), but as described below the Liquidator provided significant information from after February 11, 2004 concerning proofs of claim, specifically produced documents from after February 11, 2004 on which the Liquidator relied, and provided deposition discovery without limitation by date.

4. In responding to ACE's and Benjamin Moore's interrogatories, the Liquidator referenced post-February 11, 2004 developments such as court orders in several answers. Liquidator's Answers and Objections to the ACE Companies' Interrogatories, Answers 7, 16 and 19; Liquidator's Supplemental Answers and Objections to Benjamin Moore & Co.'s Interrogatories, Answers 4, 7, 8. In connection with the supplemental answers to Benjamin Moore's interrogatories provided pursuant to the May 12, 2005 Order, the Liquidator produced

hundreds of pages of proofs of claims to ACE and Benjamin Moore and provided charts identifying and describing proofs of claims in certain categories.

5. In the letter responding to ACE's questions concerning the Liquidator's responses to ACE's document requests, the Liquidator specifically advised ACE that:

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.

ACE Motion Ex. C at 4, 7-8 (emphasis added).

6. Finally, the Liquidator did not assert any objection to deposition discovery based on date. Counsel for ACE and for Benjamin Moore deposed Ms. Ellis and Messrs. Bengelsdorf, Rosen, Williams, Warmuth, and Hughes without any temporal limitation. Over forty of the exhibits used by ACE and Benjamin Moore in deposing these witnesses were dated after February 11, 2004. Indeed, the second deposition of Mr. Rosen was almost entirely devoted to post-February 11, 2004 proofs of claim issues. The Liquidator's limitation of one question during the deposition of one ACE witness, Mr. Wamser (ACE Motion Ex. D), does not establish anything, while the agreement to limit the scope of Mr. O'Farrell's deposition (ACE Motion Exs. D and E), merely reflects desire to take that deposition expeditiously and without preliminary motion practice. Mr. Durkin's testimony was not so limited.

7. In closing, the Liquidator notes that the Court has concluded that it has an independent obligation to assess the fairness of the Agreement with AFIA Cedents. Order on Remand at 11 (October 8, 2004). Even if there were an agreement as asserted by ACE, it should not preclude the Court from considering evidence that it deems relevant. In the circumstances,

the Court should address the question of post-February 11, 2004 evidence only when, and if, it is presented in the context of specific evidence at the hearing.

CONCLUSION

For the foregoing reasons, the ACE Companies' motion should be denied.

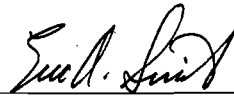
Respectfully submitted,

ROGER A. SEVIGNY, INSURANCE
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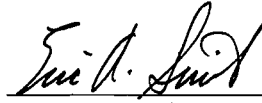


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July 20, 2005

Certificate of Service

I hereby certify that a copy of the foregoing Liquidator's Opposition to ACE Companies' Motion in Limine on Precluding Evidence Post-Agreement was sent, this 20th day of July, 2005, by first class mail, postage prepaid to all persons on the attached service list.

A handwritten signature in black ink, appearing to read "Eric A. Smith", written over a horizontal line.

Eric A. Smith

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