THE STATE OF NEW HAMPSHIRE
SUPREME COURT

In the Matter of the Liquidation of
The Home Insurance Company

No. 2004-0319

ACE COMPANIES' MEMORANDUM IN OPPOSITION TO LIQUIDATOR'S MOTION TO DISMISS

Respondents Century Indemnity Company, ACE Property and Casualty Insurance Company, Pacific Employers Insurance Company and ACE American Reinsurance Company (collectively, the "ACE Companies") respectfully submit this memorandum in opposition to the Liquidator's Motion to Dismiss (the "Motion"):

INTRODUCTION

In the Motion, the Liquidator asks the Court to dismiss the ACE Companies' appeal before the parties even have submitted briefs to the Court on the novel and far-reaching issues presented by the Liquidator's proposed scheme to pay "incentives" to certain creditors (the "AFIA Cedents") to file claims against Home Insurance Company ("Home") for the sole purpose of seeking recoveries for those claims from the ACE Companies. Both the Merrimack County Superior Court (McGuire, J.) and the Liquidator agree that the Liquidator's plan raises questions of first impression under New Hampshire law. (*See* April 29, 2004 Order (the "Order") at 1; Liquidator's Response to Motion to Expedite Appeal at 4.) The Motion, however, seeks to cast aside the "complex issues faced in this matter" and foreclose any consideration of the merits.

The Liquidator ignores the fact that the ACE Companies were granted the right to intervene in the Superior Court as a party with a direct and immediate interest in the Liquidator's scheme and as the very party prejudiced by it. Indeed, the Liquidator assented to the ACE Companies' standing in this proceeding, and the Court below recognized as much. As set forth

in *In re Petition for Admission of Demers,* 130 N.H. 31, 33 (N.H. 1987) (Souter, J), and the leading treatise NEW HAMPSHIRE PRACTICE, CIVIL PRACTICE AND PROCEDURE, an intervening party has all the rights of a party in the case as it then exists and thereafter develops -- including appellate review.

Moreover, the Liquidator has not met his considerable burden of demonstrating that the drastic remedy of summary dismissal is warranted here. Standing turns on whether the order appealed from diminishes a party's property or detrimentally affects its rights. Here, the ACE Companies are challenging an order that, according to the Liquidator, will cost the ACE Companies as much as $231 million. (Liquidator's Memorandum of Law in Support of Motion to Dismiss ("Liquidator's Mem.") at 3). The Order approved an unprecedented scheme whereby the Liquidator will pay tens of millions of dollars to one subclass of Home's Class V creditors - the AFIA Cedents - to induce them to file claims with the Home estate that the Liquidator maintains will not be filed absent the incentives. The Liquidator readily concedes that the sole purpose of these incentives is to inflate Home's ability to collect reinsurance from certain of the ACE Companies. The rights of those ACE Companies thus have been detrimentally affected -- by tens, if not hundreds, of millions of dollars -- by the Order. Moreover, although the ACE Companies also are Class V creditors of Home, they will not receive any of the benefits the Liquidator proposes to provide to the AFIA Cedents, in violation of § 402-C:44 of the New Hampshire Insurers Rehabilitation and Liquidation Act (the "Act").

The Liquidator ignores the direct and tangible harm that the ACE Companies will suffer in the event the Order is upheld on appeal. Instead, the Liquidator tries to portray the ACE Companies as "debtors," and asserts that a debtor's interest do not support appellate standing. Even assuming that the ACE Companies are "net debtors" (which, in the event the Order is

reversed, they would not be), the authorities upon which the Liquidator relies do not support his claim. Where, as in this case, a party has a direct and tangible economic interest in the outcome of a matter before the court, the party is an "aggrieved person" and thus has standing to appeal.

Finally, the Liquidator complains that certain of the ACE Companies would receive a "windfall" if the Order were reversed, and that the Order imposes no new obligations upon the ACE Companies. Such assertions are wholly irrelevant to the issue here, which is whether the ACE Companies' property interests or rights are affected by the Order. That said, those ACE Companies that reinsure Home would not enjoy a "windfall" if the Order were reversed. The agreement proposed by the Liquidator unlawfully pays the AFIA Cedents to file claims they would not, in the ordinary course of business, bother to submit in a liquidation of Home that complies with New Hampshire law. Moreover, the ACE Companies are able to discern from the figures reported by the Liquidator that the claims that will be filed by the AFIA Cedents include claims that have been denied before or that have no merit. Therefore, the Liquidator's scheme does impose new obligations on the ACE Companies because it would force them to devote resources to adjust, determine and otherwise deal with claims that normally would not be submitted in a lawful liquidation -- including claims that previously have been denied (without objection by the cedent) as well as those that are time-barred.

PROCEDURAL BACKGROUND

In the Order, the Superior Court approved an agreement (the "Proposed Agreement") that the Liquidator entered into with representatives of certain of the AFIA Cedents -- insurers who had ceded insurance risk to Home as a participating member of the American Foreign Insurance Association ("AFIA") reinsurance pool. In his motion for approval of the Proposed Agreement, the Liquidator alleged that the AFIA Cedents would have no reason to submit their claims in the Home liquidation because they constitute Class V claims under § 402-C:44 of the Act, and Class V claimants are unlikely to receive a distribution in Home's liquidation. (Liquidator's Motion for Approval of Agreement and Compromise with AFIA Cedents at 5.) The Liquidator sought to justify the Proposed Agreement as a "compromise" or "settlement" of alleged threats by the AFIA Cedents to seek to satisfy their claims against Home through separate proceedings in England or otherwise outside Home's New Hampshire liquidation proceedings. (*Id.* at 5-7) Although the Liquidator acknowledged that such attempts would be without legal basis and could be defeated, he nevertheless agreed to provide a cash "incentive" to the AFIA Cedents to file their claims in the Home liquidation by setting into motion a "scheme of arrangement" under English law that would pay the AFIA Cedents half of the net proceeds that are recovered from companies -- including certain ACE Companies -- who reinsured Home's liabilities to the AFIA Cedents.

The ACE Companies, all of which were reinsured by Home and thus are Class V creditors, and some of which are reinsurers of Home's AFIA liabilities, objected to the Liquidator's motion. The ACE Companies alleged that the Proposed Agreement directly violates the mandatory order of distribution provisions in RSA § 402-C:44 because the AFIA Cedents would receive a distribution before the claims of higher classes of creditors had been

paid in full and in an amount different from other Class V creditors of Home (like the ACE Companies). (Memorandum of the ACE Companies in Support of Their Objections and Response to Liquidator's Motion for Approval of Agreement with AFIA Cedents at 8-9) (*See* Objection to Motion to Dismiss ("Obj."), Ex. A). The ACE Companies further alleged that the Liquidator lacked the statutory authority to enter into a "compromise" with certain creditors that violates the order of distribution expressly required by the New Hampshire Legislature. In the event that the Superior Court determined as a threshold matter that the Liquidator had authority to effect such a "compromise," the ACE Companies also sought the opportunity to conduct limited discovery and present evidence regarding the issue of whether the Proposed Agreement was a reasonable exercise of the Liquidator's authority. (*Id.* at 22-23) Nevertheless, without allowing discovery or an evidentiary hearing, the Superior Court approved the Proposed Agreement, finding that the Liquidator had the power to enter into the agreement "to protect the interests of the insureds and creditors" of Home.[1] (*See* Order at 2.)

On May 7, 2004, Benjamin Moore & Co. ("Benjamin Moore") filed a Notice of Mandatory Appeal directly with the New Hampshire Supreme Court.[2] Believing that the Benjamin Moore appeal divested the Superior Court of jurisdiction, on May 11, 2004, the ACE Companies filed a motion to stay with this Court and a motion to waive the requirement in Rule 7-A that motions for a stay be filed with the Superior Court in the first instance. That same day,

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[1] At a scheduling hearing on April 9, 2004, the Superior Court ruled that it would proceed to the question of discovery and an evidentiary hearing after first hearing argument on the limited question of the Liquidator's authority. Following that argument, the Order granted the Liquidator's motion in its entirety without reaching the question of discovery or whether the Liquidator's authority had been exercised reasonably.

[2] Pursuant to Rule 7, the ACE Companies are a party to the appeal by virtue of the Notice of Mandatory Appeal filed by Benjamin Moore. The Liquidator has agreed that "the Order was final and appealable as of right." (Liquidator's Opposition to Motion to Transfer Question of Law for Interlocutory Appeal at 1.)

the Supreme Court informed counsel for the ACE Companies that the motion to waive filing of the motion to stay had been denied, and that the case was remanded to the Superior Court for the limited purpose of ruling on any motion to stay filed by the ACE Companies. Immediately after this Court's Order, the ACE Companies filed a Motion to Stay with the Superior Court.[3] By Order dated June 1, 2004, the Superior Court denied the ACE Companies' Motion. Despite the pendency of the appeal, however, the Superior Court purported to issue an Addendum to its Order belatedly addressing the ACE Companies' request for further evidentiary hearing, stating such a hearing "would not be helpful." (*See* Addendum to Order of April 29, 2004, Obj. Ex. B at 2.)[4]

ARGUMENT

I. ANY QUESTION OF THE ACE COMPANIES' STANDING ALREADY HAS BEEN RESOLVED.

The ACE Companies, having been granted the right to intervene in these proceedings, became a party for all purposes with respect to these proceedings, including a direct appeal. "Once a person has been allowed to intervene as a party, he has all the rights of a party in the case as it then exists and thereafter develops." 4 R. WIEBUSCH, NEW HAMPSHIRE PRACTICE, CIVIL PRACTICE AND PROCEDURE § 6.23 (2d ed.) (citing *In re Petition for Admission of Demers*,

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[3] On May 13, 2004, the ACE Companies also filed with this Court a Motion to Expedite Consideration of Appeal and to Suspend Rules. The Liquidator filed his response to the motion to expedite on May 21, 2004. The Liquidator opposed the expedited schedule proposed by the ACE Companies, but recognized the need for a speedy appeal and asked the Court to grant the appeal high priority status. (Liquidator's Response to Motion to Expedite Appeal at 4.)

[4] The ACE Companies respectfully suggest that the Superior Court lacked any jurisdiction to issue an "addendum" to the Order. The filing of an appeal divests the trial court of general jurisdiction and, indeed, this Court noted the limits of the Superior Court's jurisdiction when it remanded the case to the Superior Court solely for a decision on the motion to stay. In the June 1 Order, the Superior Court recognized that "the case was remanded for the limited purpose of ruling upon any motion to stay filed by ACE Companies." (June 1 Order at 1.) Moreover, no party had asked the Superior Court to clarify, amend or supplement the Order prior to the filing of the appeal. The Superior Court's "addendum"

130 N.H. 31, 33 (N.H. 1987) (Souter, J.)). In *Demers*, the Court allowed a direct appeal by an appellant who "became a party by intervening." *Demers*, 130 N.H. at 33. *See also* 5 WIEBUSCH, § 61.03 at n.19 ("Persons who have been allowed to intervene as parties may claim appellate review.") (citing *Demers*).

The Liquidator assented to the ACE Companies' petition to intervene, and the Superior Court granted the ACE Companies' status as intervener. (*See* ACE Companies' Assented-to Petition to Intervene ("Assented-to Petition"), Obj. Ex. C. at 2; Order Relative to Pending Liquidator's Motion for Approval of Agreement and Compromise with AFIA Cedents, Obj. Ex. D). In granting intervenor status to the ACE Companies, the Superior Court recognized that the "ACE Companies have a direct and immediate interest in the Liquidator's Motion for Approval of Agreement and Compromise With AFIA Cedents" and that the ACE Companies "will be severely prejudiced if they are not permitted to intervene and raise their statutory objections ... as well as their constitutional objections[.]" (Assented-to Petition, Obj. Ex. C at 2.)

Accordingly, there can be no question that the ACE Companies have standing to pursue this appeal. Indeed, the Liquidator conceded the issue of standing in the court below. At the April 9, 2004 hearing, counsel for the Liquidator expressly stated, "as a legal standing issue, we [the Liquidator] have not really suggested that as a legal constitutional issue [the ACE Companies] lack standing[.]" (April 9, 2004 Transcript at 26, 16-19, Obj. Ex. E) Having thus assented to the ACE Companies' petition to intervene and the trial court's recognition of the ACE Companies' status as an intervening party, the Liquidator should not now be allowed to question the ACE Companies' standing in order to prevent review of the Order.

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therefore is a nullity. In any event, the ACE Companies believe that the after-the-fact reasons given by the Superior Court for its denial of due process do not withstand scrutiny.

II. THE ACE COMPANIES ARE AGGRIEVED BY THE ORDER

The Liquidator's motion asserts that the ACE Companies lack standing because they are not "persons aggrieved by the Order." Even without contesting that standard as described by the Liquidator, the ACE Companies clearly qualify as "persons aggrieved by the Order." As set forth in the Liquidator's memorandum, to qualify as a "person aggrieved," a party must be "directly and adversely affected pecuniarily" by the order appealed from because that order diminishes the party's property, increases its burdens or detrimentally affects its rights. *In re Dein Host, Inc.*, 835 F. 2d 402, 405 (1st Cir. 1978) (applying federal law). The Order inflicts all of these harms on the ACE Companies.

The Order allows the Liquidator to pay tens of millions of dollars of "incentives" to the AFIA Cedents in order to induce the AFIA Cedents to file claims with the Home estate that they would not otherwise file -- a point conceded by the Liquidator. The stated purpose and intended result of the Liquidator's proposal is to inflate the Liquidator's claim for reinsurance proceeds from certain of the ACE Companies. The ACE Companies contend that such an incentive scheme violates New Hampshire's order of distribution statute, § 402-C:44 of the Act, in multiple ways. If this Court agrees with the Liquidator and affirms the Superior Court's decision, claims in the tens or perhaps hundreds of millions of dollars will be filed in the Home liquidation for which the Liquidator will seek reimbursement from certain of the ACE Companies. Conversely, if this Court reverses the Order, the claims, by the Liquidator's own account, never will materialize.[5] Thus, the harm to these ACE Companies if the Order is allowed to stand cannot seriously be disputed.

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[5] Indeed, the Liquidator has recognized this possibility by amending its agreement with the AFIA Cedents to allow (i) an extension of the standstill from June 1, 2004 to December 31, 2004; and (ii) AFIA Cedents to withdraw without prejudice any proof of claim filed in the Home liquidation in the event that this Court rules against the Liquidator. (*See* May 25, 2004 letter from Gareth Hughes and other related letters, Obj. Ex. F.)

Moreover, the ACE Companies as Class V creditors of Home are harmed by the Order because they are being treated differently than other Class V creditors, in violation of RSA § 402-C:44, which prohibits the creation of creditor subclasses. The Order permits the Liquidator to make a preferential distribution only to some Class V creditors, but not to all. The ACE Companies therefore have standing to challenge the Liquidator's unlawful discrimination against them as Class V creditors.

If a party truly is "adversely affected" by the Order it makes no difference whether that party is a debtor or a creditor or whether a party is an insurer, reinsurer, policyholder, or none of these things. The Liquidator does not cite any cases that hold that a reinsurer, or a debtor, or anyone else involved in an insolvency proceeding lacks standing simply because of its status as such. The only material question is whether that party's property, burdens or rights are adversely affected by the matter before the court. As demonstrated herein, the ACE Companies plainly and directly have been adversely affected by the Order, and thus have standing to appeal it.

A. The ACE Companies are not solely "debtors" or necessarily "net debtors" and, even if they are, such status is immaterial to their standing to appeal

In an attempt to deprive the ACE Companies of their rights to appeal, the Liquidator claims that the ACE Companies are "debtors" or "net debtors" and, as a result, lack standing. This argument is fatally flawed.

According to RSA § 402-C:1, "[t]he purpose of [the Act] is the protection of the interests of insureds, creditors, and the public generally...." (emphasis added). The ACE Companies as creditors will be filing proofs of claim against Home that total tens of millions of dollars. They therefore have standing to complain where other creditors of the same class are receiving preferential treatment.

Although the Liquidator asserts that certain of the ACE Companies will owe offsetting debts to Home that will make them "net debtors," that alleged status is wholly contingent on the outcome of this appeal. In the event that this Court determines that the Liquidator's scheme violates the Legislature's express statutory mandates, the ACE Companies will be significant *"net creditors"* of Home because the AFIA Cedents will not file the claims that otherwise would give rise to reinsurance claims by Home against the ACE Companies.

Although certain of the ACE Companies could be "net debtors" of Home if the Proposed Agreement ultimately is approved, the Liquidator concedes that Pacific Employers Insurance Company ("PEIC"), one of the ACE Companies, always will be a "net creditor" to the Home estate. The only justification the Liquidator offers for his assertion that PEIC does not have standing is that PEIC somehow is "inextricably intertwined" with the other ACE Companies. The Liquidator's unstated assumption that corporate formalities should be ignored based solely upon ostensible common ownership finds no support in the law. In the only case cited in support of this proposition, *Palmer v. U.S. Savings Bank of America*, 131 N.H. 433, 441-42 (1989), this Court upheld the Superior Court's holding that certain proposed plaintiffs lacked "standing" to prosecute a shareholder's derivative action because they could not fairly and adequately represent the class of all shareholders due to their ties to an insider. The *Palmer* case, however, addresses traditional concepts of standing to prosecute a derivative or class action, and furnishes no reason why PEIC cannot prosecute this appeal.[6] PEIC is a separate and distinct corporation with

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[6] Other cases cited by the Liquidator are similarly inapposite. *In the Matter of Electric Mut. Liab. Ins. Co.*, 689 N.E.2d 773, 774 (Mass. 1998) held that reinsurers lacked standing to bring a complaint for judicial review of an administrative order allowing a carrier to redomesticate to another jurisdiction because they (unlike the ACE Companies) could not show that that redomestication -- the effects of which necessarily were speculative and indirect -- "caused them direct and certain injury." Similarly, *LaFarge Corp. v. Pennsylvania Ins. Dep.*, 690 A.2d 826, 838 (Pa. Cmwlth. 1997), *rev'd on other grounds*, 735 A.2d 74 (Pa. 1999), held that reinsurers lacked standing to appeal an order allowing a carrier's restructuring, but specifically stated that the reinsurers could file separate lawsuits if and when they actually were injured. Here, the Liquidator admits that his sole motive for proposing the

separate and distinct claims against Home, and as an undisputed Class V creditor of Home is entitled to complain about preferential treatment afforded to other members of its creditor class. It thus has standing to appeal the Order.

Indeed, not one of the cases the Liquidator cites in support of his argument that the ACE Companies "have suffered no injury" and are not "aggrieved" simply as a result of their supposed status as "debtors" actually lends support to that proposition. *In re J.M. Wells, Inc.*, 575 F.2d 329, 331 (1st Cir. 1978), held that a bankrupt with no hope of a return from *its own* estate did not have standing to challenge certain attorney fees paid out of that estate. The reason for the holding was that no economic interest of the debtor would be affected by the fee payments. Here, the Liquidator's alleged violation of RSA § 402:C-44 plainly does affect the economic interests of the ACE Companies.

Similarly, the trio of *Worthen v. New York Central*, 77 N.H. 520, 93 A. 1036, 1037 (1915), *Veazie Bank v. Young*, 53 Me. 555, 560 (1866), and *Swan v. Picquet*, 20 Mass. 443, 444-45 (1826), offered in support of the supposed proposition that debtors or net debtors have no standing to complain about the manner in which an estate is administered in fact say no such thing. Not only do all of these cases involve pure debtors,[7] as opposed to (at worst) mixed creditors/debtors like the ACE Companies, the most that these old decedent's estate cases -- as well as the more recent *In re El San Juan Hotel*, 809 F.2d 151, 154 (1st Cir. 1987) -- stand for is the sensible proposition that an alleged debtor to an estate cannot oppose the appointment of an administrator in an attempt to prevent the estate from being administered altogether and thereby prevent himself from being sued. The ACE Companies are not trying to prevent Home from

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scheme at issue in this appeal is to increase his ability to collect money from certain of the ACE Companies. It is hard to imagine an injury that is more ripe, direct and certain.

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being administered or to prevent the Liquidator from suing them. Instead, this appeal seeks to prevent the creation of a specific subclass of claims by alleging that the scheme intended to foster them is not permitted under New Hampshire law. This is, for all practical purposes, a defense to the claims themselves and not an attempt to interfere with or undermine the administration of Home.

Similarly, the ACE Companies are not "sureties," as in *C-E Building Products, Inc. v. Seal-Rite Aluminum Products*, 114 N.H. 150, 151-152 (1974), or "guarantors," as in *In re Multiple Serv. Ind.*, 46 B.R. 235, 236-37 (E.D. Wis. 1985), of Home. The reasoning of these cases is illustrative of the ACE Companies' clear standing in this appeal. *C-E Building Products* held that a surety did not have standing to intervene in a suit as, under its particular circumstances, the surety would not be bound in any way by the outcome of the suit; indeed, the judgment would not even be admissible in any future litigation against the surety. Here, however, the ACE Companies will be directly and adversely affected if the Liquidator is permitted to induce claims to be filed against Home in order to collect more reinsurance proceeds from the ACE Companies. It is the very party that is affected and has standing to argue that the proposal violates applicable law. By contrast, *Multiple Services* held that a guarantor, by definition, "assumes the risk that the security will be lost if the debtor defaults on its obligations and proceeds to bankruptcy court." *In re Multiple Services*, 46 B.R. at 237. The present situation, of course, involves neither a guarantee nor a default. Instead, the Liquidator, by his own admission, is trying to stimulate the filing of claims in an attempt to obtain assets from the ACE Companies that he cannot otherwise reach. Nothing the ACE Companies ever have done

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[7] In fact, in *Veazie*, the complaining party was even more remote -- a "mere garnishee of a debtor to estate." *Veazie*, 53 Me. at 559 (1866).

can in any way be construed as an agreement to acquiesce to a scheme that never has been attempted in any insurance company liquidation.

It is not surprising that none of the cases cited by the Liquidator support his argument that the ACE Companies lack standing due to their supposed status as net debtors of the estate, because that proposition is not the test for standing. Rather, the salient question is -- as the Liquidator himself recognizes (see Liquidator Mem. at 7, 8, 9, 10, 11, 13) -- whether the appealing party is an "aggrieved person."[8] As amply demonstrated above, the ACE Companies are "aggrieved persons." They therefore have standing to appeal the Order.

B. The direct injury inflicted on the ACE Companies by the Liquidator's proposal entitles them, under due process standards, to be heard on appeal

The Court likewise should reject the Liquidator's argument that reinsurers such as the ACE Companies fall outside the ambit of interests that the Act is intended to foster and protect. As set forth above, the ACE Companies are Class V creditors of Home who are being discriminated against in ways that are expressly prohibited by the Act. Moreover, there is a direct and immediate nexus between the alleged violation of the Act and the economic harm inflicted upon the ACE Companies as Home's reinsurers. It cannot be the case that New Hampshire law deprives the intended target of a violation of the Act of its right to appellate review merely because it may be a reinsurer (or other type of entity) rather than a policyholder or creditor. The ACE Companies have the absolute right to argue that the Liquidator is seeking to deprive them of their property in violation of the law or without due process of law.

The due process clause of the Fourteenth Amendment requires that "deprivation of life,

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[8] See e.g., *Kehoe v. Schindler*, 221 B.R. 285, 287 (1st Cir. B.A.P. 1998). (Chapter 7 debtors did not have standing to challenge bankruptcy order certifying the election of the trustee because they were not "persons aggrieved," and not because they were debtors rather than creditors) ("To defeat the appellee's dismissal motion, the Kehoes must demonstrate that they have standing to appeal the bankruptcy court's certification of Schindler's election as trustee. They have appellate standing if they qualify as 'persons aggrieved' by that order.")

liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case." *Armstrong v. Manzo*, 380 U.S. 545, 550 (1965), quoting *Mullane v. Central Hanover Bank & Tr. Co.*, 339 U.S. 306, 313 (1950). A "fundamental requirement" of constitutional due process in New Hampshire is likewise "the opportunity to be heard." *Royer v. State of New Hampshire Dep't of Employment Security*, 118 N.H. 673, 679, 394 A.2d 828, 831 (1978). In order to satisfy these requirements, the hearing must be granted "at a meaningful time and in a meaningful manner." *Armstrong*, 380 U.S. at 552; *see also Royer*, 118 N.H. at 679, 394 A.2d at 831 ("that opportunity [to be heard] is useless unless . . . the hearing is granted at a meaningful time and in a meaningful manner") Indeed, even an indirect and partial negative effect on a property interest entitles a party to participate fully in any proceeding affecting that interest. *Tulsa Professional Collection Serv. v. Pope*, 485 U.S. 478, 488 (1988). It is also well settled that procedural due process norms apply to appellate proceedings. *See, e.g., Griffin v. Illinois*, 351 U.S. 12, 18 (1956). If the ACE Companies are correct, the Liquidator illegally is seeking to take tens if not hundreds of millions of dollars of their property. They therefore are entitled fully to press their arguments before this Court.

CONCLUSION

For the foregoing reasons, the ACE Companies respectfully request that the Court deny the Motion.

Respectfully submitted,

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The undersigned certifies that I served a copy of the foregoing on the following counsel via First Class mail on June 11, 2004.

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