

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

**ACE COMPANIES' PARTIAL OBJECTION TO LIQUIDATOR'S  
MOTION FOR SCHEDULING ORDER OR CONFERENCE TO  
ADDRESS REMAND ORDER**

Respondents Century Indemnity Company, ACE Property and Casualty Insurance Company, Pacific Employers Insurance Company, and ACE American Reinsurance Company (collectively, the "ACE Companies") by their attorneys, submit this Partial Objection to Liquidator's Motion for Scheduling Order or Conference to Address Remand Order. **For the reasons set forth herein, the ACE Companies do not object to a conference with the Court to address the further proceedings directed by the New Hampshire Supreme Court in its Order of September 13, 2004 (the Order"). They do, however, vigorously object to the truncated procedure proposed in paragraph 3 of the Liquidator's Motion.**

1. In its Order, the Supreme Court made clear that there was an insufficient evidentiary record for it to rule on the legal issues raised by the parties before this Court, but not ruled upon by this Court.

2. The Supreme Court further found that this Court did not consider whether it had an independent obligation to assess the agreement's fairness through fact-finding proceedings.

3. Wholly ignoring the Supreme Court's concern regarding the lack of a fully-developed factual record, the Liquidator seeks to persuade this Court to rule on the

five remanded issues on the basis of legal argument and affidavits, without allowing the discovery sought by the ACE Companies to develop and challenge the facts previously submitted by the Liquidator through affidavits. The Liquidator's proposal presumptively assumes that the Liquidator has met its burden of proof on each of these issues and that the sole purpose of remand is to supply this Court with evidentiary material to bolster its Order approving the agreement between Home and the AFIA Cedents – the truth and accuracy of which the ACE companies vigorously dispute.

4. It was the Liquidator's insistence on expediting the earlier proceedings before this Court -- and cutting off the ACE Companies' requests for reasonable discovery and an evidentiary hearing -- that resulted in the factual record that the Supreme Court determined was inadequate to support this Court's previous ruling, and thus, the remand of this case after the parties incurred the expense and delay of an appeal. *See, e.g.*, Liquidator's Objection to Objectors' Requests for Evidentiary Hearing and Liquidator's Motion Concerning Discovery at p.1 ("The Liquidator objects because under the present circumstances summary proceedings, not plenary, are sufficient.")

5. The summary procedure proposed by the Liquidator upon remand will deprive the ACE Companies of their right to conduct reasonable discovery on the specific issues remanded by this Court, to develop an adequate factual record for this Court, and to fully brief and argue those vigorously disputed issues.

6. Accordingly, the ACE Companies request that this Court decline to adopt the summary procedure proposed by the Liquidator and to schedule, instead, a structuring conference at which a reasonable discovery schedule can be established.

WHEREFORE, the ACE Companies respectfully request this Court:

- A. Deny the Liquidator's Motion for Scheduling Order;
- B. Schedule a structuring conference at the convenience of the Court for the purpose of establishing a discovery schedule; and
- C. Grant such other and further relief as this Court deems just and proper.

Dated: September 20, 2004

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned certifies that I served a copy of the foregoing on the following counsel via First Class mail on September 20, 2004.

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