

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' WRITTEN RESPONSE
TO REVISED PROPOSED ORDER ON REMAND**

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, Orr & Reno, PA, submit the following written response to the Court's proposed order on remand:

(1) The ACE Companies believe that in order to be consistent with and give due respect and deference to the issues remanded by the Supreme Court one particular aspect of the Court's revised draft order on remand needs to be recast - that relating the changes made on page 13 of the Order on Remand.

(2) In its decision and at oral argument, the Supreme Court was concerned that the "trial court reached its conclusion without conducting an evidentiary hearing . . ." and declined to "rule upon these arguments in the first instance, absent a sufficient evidentiary record." (Order at ¶ 3). The Supreme Court directed an evidentiary hearing in its Order.

(3) In particular, the Supreme Court asked this Court to consider whether it had "an independent obligation to assess the fairness of the agreement with the AFIA Cedents." At the October 4 conference, this Court held that it does, and allowed the ACE Companies to proceed with discovery on that issue.

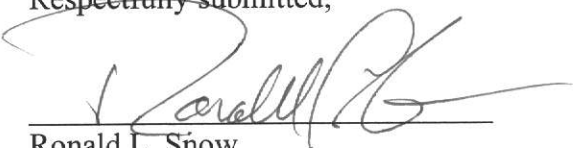
(4) The ACE Companies believe that the additions with respect to the need to seek clarification from the Supreme Court regarding the agreement to the Revised Order on Remand

at page 13 are both inconsistent with the Supreme Court's order, inconsistent with the Court's view at the status conference, and internally inconsistent with draft order on remand.

(5) In order that the Order on Remand fairly represents the position taken by the ACE Companies and Benjamin Moore before this Court and on appeal, we respectfully request that he Court take note of and add the argument raised that the payments to the AFIA Cedents would violate RSA 402-C:44 and 402-C:25 (xxi). See p. 7 of proposed Order (emphasis supplied). In addition, we respectfully request that the Court take note of the arguments below that in disputing that the payments to be made to the AFIA Cedents are administered expenses, the ACE Companies pointed out that the Liquidator himself had described the payments in the initial motion as "distributions" to the AFIA Cedents rather than payments for purposes of preserving or recovering assets. The Court's Order does not take note of this admission.

Respectfully submitted,

10/8/09



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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 October 8, 2004.

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