EXHIBIT 1

STATE OF NEW HAMPSHIRE

MERRIMACK, SS. SUPERIOR COURT

In the Matter of the Liquidation of
The Home Insurance Company.

Docket No. 03-E-106

LIQUIDATOR'S OBJECTION TO OBJECTORS' REQUESTS FOR EVIDENTIARY HEARING AND LIQUIDATOR'S MOTION CONCERNING DISCOVERY

Roger A. Sevigny, Commissioner of the State of New Hampshire Department of Insurance, in his capacity as Liquidator of The Home Insurance Company (the "Liquidator"), pursuant to Orders dated June 13, 2003, by his attorneys, the Office of the Attorney General, respectfully objects to the ACE Companies' and Benjamin Moore Co.'s (the "Objectors") requests for an evidentiary hearing expressed in their objections filed on March 19, 2004. The Liquidator objects because under the present circumstances summary proceedings, not plenary, are sufficient. [1]

In addition, there should be no discovery in this liquidation proceeding except as approved by the Court, and none should be allowed here now. The ACE Companies have sought discovery from the Liquidator that will be both futile and burdensome to the Liquidator and the estate and the completion of this discovery would effectively make it impossible for the Liquidator to realize on an important asset of the estate the

[1] Defined terms used herein have the same meaning as expressed in the Liquidator's Motion for Approval of Agreement and Compromise with AFIA Cedents, dated February 11, 2004 and filed March 22, 2004 (the "Liquidator's Motion").

debts owed by ACE Companies, Century Indemnity Company, Century International Reinsurance Company Limited.

A. THE LIQUIDATOR OBJECTS TO THE REQUEST FOR A PLENARY PROCEEDING

The Objectors suggest that they believe that plenary procedures including discovery is necessary to establish the merits of their objections. A plenary evidentiary hearing would only be appropriate if there was some point to the full presentation of evidence. The genesis of the Agreement is the existence of complex issues not susceptible of prompt determination, as demonstrated by the Liquidator's Motion and reply papers. The Liquidator clearly has the discretion to enter into the Agreement and nothing alleged in the Objectors' papers seriously questions the reasonableness of the exercise of that discretion in this instance. Further, the Liquidator, with his own affidavits and reply, has effectively rebutted every relevant assertion made by the Objectors. Moreover, the time required for the "development of an appropriate factual and legal record" by a Trojan Horse party that remarkably has vowed to engage in "assured" "complex, protracted and costly litigation" will come at the direct expense of The Home's policyholders —the real parties in interest— also militates towards keeping the proceedings on the Liquidator's Motion summary. The Liquidator's Motion is time-sensitive. The Agreement addresses matters concerning the filing of claims that should be resolved prior to the June 13, 2004 claim filing deadline, and the standstill provided in the Agreement will end of its terms on June 1, 2004 (absent further multiparty negotiations and agreement). Agreement ¶ 1.7.8.

The motion arises under RSA 402-C:25, which authorizes the Liquidator to act subject to the Court's control, and is addressed to the Court in its supervisory capacity. The objectors have brought arguments to the Court's attention for it to consider in reviewing the Liquidator's action in entering the Agreement. The statute does not provide procedures for such applications by the Liquidator, however, and in these circumstances summary proceedings on the Liquidator's Motion should be constitutionally adequate. See, e.g., Ewing v. Mytinger & Casselberry, Inc., 339 U.S. 594, 599-600 (1950) (summary proceedings may be appropriate when issue is to protect public interest); Fahey v. Mallonee, 332 U.S. 245, 253-54 (1947) (summary proceedings over matter of "delicate nature" constitutionally adequate if "exercised with disinterestedness and restraint"); American Land Co. v. Zeiss, 219 U.S. 47, 64-71 (1911) (summary proceedings constitutional if not "unreasonable and unjust so as to impair or destroy fundamental rights" even though they may affect rights of unknown interested parties); In re Boomgarden, 780 F.2d 657, 661-62 (7th Cir. 1985) (summary proceedings in bankruptcy are constitutionally adequate); Drislor Assocs. V. Metro North State Bank (In re Drislor Assocs.), 110 B.R. 937, 940-41 (D. Col. 1990) (same).

The Court may use its broad equitable powers to fashion abbreviated procedures to "advance the government's interest in judicial efficiency by reducing the time needed to resolve disputes, decreasing the costs of litigation, and preventing the dissipation of the receiver's assets." Securities and Exchange Comm'n v. Basic Energy & Affiliated Resources, Inc., 273 F.3d 657, (6th Cir. 2001). It should be up to the Objectors to demonstrate how they are prejudiced by the lack of a full evidentiary

hearing on the matter. Id. at 669; see Securities and Exchange Comm'n v. Wencke, 783 F.2d 829, 838 (9th Cir. 1986), (party opposed to summary proceedings must show how "they would have been better able to defend their interests in a plenary proceeding"), *cert denied sub nom* DeLusignan v. Gould, 479 U.S. 818 (1986). Given that ACE Companies' primary interest is in protecting Century and CIRC (which should come out the same either way unless the process is employed for a prohibited purpose such as to hinder and delay), and the interests of BMC and PEIC will actually be enhanced by a speedy resolution of the matter, it is difficult to see how the employment of summary non-evidentiary proceedings will deprive either of them of any property interests.

The kind of hearing required depends upon the kind of interest at stake. See Mullane v. Central Hannover Bank & Trust Co., 339 U.S. 306, 313 (1950). And "a construction of the Due Process Clause which would place impossible or impractical obstacles in the way could not be justified." Id at 313-14. The Objectors' complaints are more directed towards the process in the abstract and not towards an articulable deprivation of property requiring plenary proceedings. As a result, the Court should exercise its equitable powers to determine that summary proceedings without full evidentiary process will be sufficient to determine whether the Liquidator acted reasonably and lawfully in entering into the Agreement. This will best protect the interests of policyholders and blunt the scorched earth tactics promised by the Ace Companies by removing "impractical obstacles" that the present circumstances and the balance of interests do not justify.

B. THERE SHOULD BE NO DISCOVERY EXCEPT AS ALLOWED BY THE COURT, AND DISCOVERY IS NOT APPROPRIATE HERE

The ACE Companies have, consistent with their aggressive strategy to create confusion and delay, served two discovery requests upon the Liquidator. That is inappropriate. This proceeding is an in rem action to liquidate an insolvent insurer in which the Court, through the Liquidator, has assumed control over the Home's assets and records. See RSA 402-C:21, I; Liquidation Order ¶ (f), (g). See Lion Bonding & Surety Co. v. Karatz, 262 U.S. 77, 88-89 (1923). Such proceedings are not adversary proceedings to which usual rules necessarily apply. See Ainsworth v. Old Security Life Ins. Co., 685 S.W2d 583, 585-586 (Mo. App. 1985) (receivership is not an "action" to which Missouri court rule concerning intervention applies). Discovery is not a matter of right in liquidation proceedings but must be allowed on application to the Court. This is consistent with the provisions enjoining actions and proceedings against Home and the Liquidator to avoid interference with the proceeding. See Liquidation Order ¶ (n); RSA 402-C:5. The ACE Companies' discovery requests should have no effect unless specifically approved by the Court.

In the alternative, the Liquidator asks the Court to stay discovery in this matter until such time as the Court determines whether plenary proceedings are necessary in this matter. If the Court determines that a summary procedure is not sufficient, it can fashion any discovery as might be necessary for a fair hearing, taking into account the exigencies of the liquidation.

The Liquidator has already served his affidavit upon the ACE Companies and will with his Reply serve further affidavits. Similarly, the ACE Companies have

served their affidavits upon the Liquidator. It is no secret that the ACE Companies are actually party to some of the events that influenced the Liquidator's decision to enter into the Agreement. And the ACE Companies have long been involved in the AFIA matters and clearly believe they have a grasp on the cross border and English law principles at stake here. Clearly, this is not a situation where the Liquidator is in a unique position of having hold of essential facts. The ACE Companies are sophisticated parties, active in the London market and deeply involved in the AFIA situation. Discovery, on the other hand, will create unnecessary burdens on the estate and the Liquidator at the cost of a potential loss of a significant asset — the debts owed to the liquidation by one or more of the ACE Companies.

The discovery sought by the ACE Companies is burdensome and unlikely to provide meaningful information beyond that already supplied, as the Liquidator's reasons for endorsing the Agreement have been explained in the motion papers. The interrogatories mostly seek information already covered in the affidavits submitted with the motion and the reply and contentions and other legal matters addressed in the briefs. Answers are thus burdensome and unnecessary. The document requests broadly seek documents concerning anything mentioned in the Liquidator's motion, even mere background (they encompass the UK proceedings, discussions concerning the Agreement, drafts of the Agreement, negotiations between the Joint Provisional Liquidators and the UK Informal Creditors' Committee, the UK scheme of arrangement, projected recoveries, working and personal files of the Liquidator, Special Deputy Liquidator, Home's Chief Operating Officer, and the Joint Provisional Liquidators, the professional qualifications of the Special Deputy Liquidator, and

notice of the liquidation and claim filing deadline). There is no basis for such a fishing expedition, which appears intended to make this motion a prolonged and expensive exercise or to advantage the ACE Companies in the other proceedings they have promised.

The Court has the authority to stay discovery for good cause shown, for the convenience of the parties and in the interest of justice. N.H. Super. Ct. R. 35(c) & (d). The Court should stay discovery pending a determination by the Court that the ACE Companies' "allegations are sufficient to allow them to conduct discovery in an attempt to prove allegations." Harris v. Iorio, 922 F. Supp. 588, 590 (M.D. Fla. 1996), *aff'd* 136 F.3d 139 (11th Cir. 1998); *see, e.g.*, Sinclair Refining Co. v. Jenkins Petroleum Process Co., 289 U.S. 689, 694 (1933) (Cardozo, J.) (premature discovery "will be useless to decree . . . any earlier, and may even be oppressive . . ." and offensive of 'judicial parsimony' which condemns a useless remedy); Bruno & Stillman, Inc. v. Globe Newspaper Co., 633 F.2d 583, 597 (1st Cir. 1980) ("As a threshold matter, the court should be satisfied that a claim is not frivolous, a pretense for using discovery powers in a fishing expedition."); Downing v. Monitor Publishing Co., 120 N.H. 383, 387 (1980) (discovery should be safeguarded when plaintiffs claim is baseless). Here it is amply clear from the ACE Companies' own statements that discovery is a pretense to delay and derail the collection of The Home's large asset—the debts owed by Century and or CIRC.

While discovery generally is to be liberally afforded, it is equally clear that it is within the discretion of the Court to allow or limit it. *See* State v. DeLong, 136 N.H. 707, 709-10 (1993) (court has discretion in matters relating to discovery and

error not reversible unless shown to harm substantive rights); N.H. Super. Ct. R. 35 (c) & (d); R. Wiebusch, 4 N.H. Prac. § 794 (1984). It is also clear that the Court can limit discovery pending the resolution of a dispositive issue. *See* Vivid Tech., Inc. v. American Science & Eng., Inc., 200 F.3d 795, 804 (Fed. Cir. 1999) ("When a particular issue may be dispositive, the court may stay discovery concerning other issues until the critical issue is resolved."); R. Wiebusch, 5 N.H. Prac. § 984 (1984) ("the Superior Court's assistance may be needed at an early date to define the issues, to lay out a schedule for discovery, or to resolve a dispositive issue of law so that the parties may know how to prepare for trial"). No harm will come to the ACE Companies if discovery is stayed pending the Court's decision whether additional process is necessary.

C. CONCLUSION

The Objectors clearly are not looking out for the best interests of the policyholders in this liquidation. Instead, a disinterested government official —the Liquidator— has reasonably determined that it is in the best interests of the estate to enter into the Agreement and collect a significant asset of the estate. While it may look complicated, at bottom it is actually quite simple: absent the Agreement the ACE Companies stand to gain a multi-million dollar windfall. If the ACE Companies successfully scuttle the deal with their avowed "protracted litigation," Century and CIRC will inappropriately benefit and The Home's policyholders will be unfairly and needlessly harmed. See Lewis v. Manufacturers Nat'l Bank, 364 U.S. 603, 609 (1961) (the happenstance of bankruptcy should not create windfalls for those party to it). There are no relevant factual disputes conjured up by the ACE Companies which

are not fully rebutted by the affidavits presented by the Liquidator. The Court should use its broad equitable powers to ensure that the interests of policyholders are not harmed by the ACE Companies' use of process to protect their own.

WHEREFORE, the Liquidator prays that this Court enter an order (i) setting the matter for a summary hearing; and (ii) setting aside or staying discovery until the Court determines whether summary or plenary proceedings are appropriate, and (iii) granting such other and further relief as may be just.

Respectfully submitted,

ROGER A. SEVIGNY,
COMMISSIONER
THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF INSURANCE

By her attorneys,

PETER W. HEED
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Dated: April 2, 2004

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Docket No. 03-E-0106

CERTIFICATE OF SERVICE

I, Jacqueline L. Johnson , do hereby certify that on April 2, 2004, I served a true copy of the foregoing upon the attached Service List, by first class mail, postage prepaid.

Dated: April 2, 2004

Jacqueline L. Johnson

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