

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In the Matter of the Liquidation of
The Home Insurance Company

Docket No. 2004- _____

**ACE COMPANIES' OPPOSITION TO LIQUIDATOR'S
MOTION FOR REMAND TO PERMIT
CONSIDERATION OF MOTION FOR RECONSIDERATION**

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 opposition to the Liquidator's motion (the "Motion") for an order remanding this matter to the Superior Court to permit the Superior Court to consider the Liquidator's pending motion for reconsideration of the order approving the interlocutory appeal statement. The ACE Companies state as follows:

1. The Motion should be denied as premature because this Court has not yet accepted the interlocutory appeal pursuant to Rule 8 of the Supreme Court Rules. On October 28, 2004, the ACE Companies filed papers with the Court in order to obtain the acceptance of the interlocutory appeal, but, as of today, the request is still pending. Under the circumstances, the remand order sought in the Motion is not necessary.
2. Even if this Court were to entertain the request for a remand, it should deny the Motion. As noted in the ACE Companies' opposition to the Liquidator's motion for reconsideration (a copy of which is attached as Exhibit A), the Liquidator has not objected to the transfer of the controlling question of law. The Liquidator instead objects to certain facts and

documents referred to in the Interlocutory Appeal Statement. (See Ex. A at ¶¶ 1-4.)¹ However, this Court is not bound by the facts contained in the Interlocutory Appeal Statement or the documents that are cited in (attached to) the statement. The Liquidator is free to bring facts to the Court's attention in his appellate brief and, pursuant to Rule 14 of the Supreme Court Rules, may submit documents for inclusion in the record on appeal. (See Ex. A at ¶¶ 4-6.) Therefore, there is no need for a remand because the underlying motion for reconsideration has no merit.²

3. Moreover, the changes to the Interlocutory Appeal Statement proposed by the Liquidator are unwarranted. The Liquidator claims that the Interlocutory Appeal Statement is "inappropriate" because (a) it allegedly "does not provide sufficient background and mischaracterizes aspects of the Order on Remand"; (b) it allegedly "omits important facts necessary to an understanding of the questions of law and includes irrelevant and disputed factual points"; and (c) the statement does not include an appendix submitted by the Liquidator on the earlier appeal and includes a transcription of the July 15, 2004 oral argument before this Court. (Motion at ¶ 1.) The ACE Companies have pointed out in their response to the pending motion for reconsideration that the facts and descriptions of the issues (and the Order on Remand) in the Interlocutory Appeal Statement are entirely proper and supported by the record. If they had not been, the Superior Court certainly would not have approved the Interlocutory

¹ In the Motion, the Liquidator admits that the sole basis for the remand request is "to afford an opportunity for the Superior Court to consider the Liquidator's objections to and comments on the Interlocutory Appeal Statement." (Motion at ¶ 1.)

² The Liquidator also claims that he was not given an opportunity to respond to the ACE Companies' motion for interlocutory appeal and the Interlocutory Appeal Statement. (See Motion at ¶¶ 5-6.) In granting the ACE Companies' motion and approving the Interlocutory Appeal Statement, the Superior Court justifiably assumed that the Liquidator would have no objection to the ACE Companies' motion, since the Superior Court had already determined (with the Liquidator's concurrence) that the ACE Companies may appeal the Court's ruling on administrative expenses. (See Order on Remand, a copy of which is attached as Exhibit B, at 14.) Indeed, as noted above, the Liquidator has not objected to the transfer itself and instead objects to collateral matters that are properly dealt with on appeal.

Appeal Statement without amendment. (See Exhibit A at ¶¶ 7-11.) Also, the issue of what documents should be included in the record on appeal is for another day.

4. On a motion for reconsideration, the Liquidator must show that there are “points of law or fact that the [Superior Court] overlooked or misapprehended.” Super. Ct. R. 59-A(1). The Liquidator has not shown that the Superior Court “overlooked or misapprehended” facts; he is simply disagreeing with the description of the facts in the Interlocutory Appeal Statement. Such an objection does not meet the standard in Rule 59-A(1) and, in any event, it raises issues that the Liquidator may address when and if this Court accepts the interlocutory appeal.

For the reasons stated above, the ACE Companies respectfully request that the Court deny the Motion in its entirety.

Date: November 1, 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 November 1, 2004.

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