

Docket No. 03-E-0106

In the Matter of the Liquidation of  
The Home Insurance Company**INTERLOCUTORY APPEAL STATEMENT**

Respondents Century Indemnity Company ("Century"), ACE Property and Casualty Insurance Company ("ACE P & C"), Pacific Employers Insurance Company ("PEIC"), and ACE American Reinsurance Company ("AARE") (collectively, the "ACE Companies") respectfully submit this Interlocutory Appeal Statement pursuant to New Hampshire Supreme Court Rule 8.

**I. Statement of the Case**

This interlocutory appeal is taken by the ACE Companies from the ruling issued on October 8, 2004 by the Merrimack County Superior Court (McGuire, J.) (the "Order on Remand") that potential payments to be made by Roger Sevigny, Insurance Commissioner for the State of New Hampshire, as Liquidator (the "Liquidator") of the Home Insurance Company ("Home") to certain insurers who had ceded insurance risk to the Home's UK branch office (the "AFIA Cedents") are administrative expenses authorized under RSA 402-C:1, III and IV; RSA 402-C:25, IV, VI and XXII; and RSA 402-C:44, I. (Order on Remand at 14.) The ACE Companies and Benjamin Moore & Company ("Benjamin Moore") had intervened, without objection, in the Home liquidation proceedings to challenge the proposed agreement between the Liquidator and the AFIA Cedents (the "Proposed Agreement"), pursuant to which the AFIA Cedents would be paid an "incentive" to file claims in Home's liquidation.

In its Order issued on April 29, 2004 (the "April 29 Order"), the Superior Court ruled that "[t]he agreement proposed by the Liquidator is authorized under the broad array of powers granted the Liquidator under RSA 402-C:25 and is consistent with the goals and purposes of the

statute to protect the interests of the insured and creditors.” (April 29 Order at 2.) The New Hampshire Supreme Court accepted an appeal from the April 29 Order, but also issued an order remanding the case to the Superior Court “for the limited purpose of ruling on any motion to stay that may be filed by [the ACE Companies].” (Order dated May 12, 2004.) On remand, the Superior Court denied the ACE Companies’ motion to stay and issued a separate order stating that a “further evidentiary hearing into whether the Liquidator has reasonably exercised his authority in endorsing the agreement would not be helpful.” (See Addendum to April 29 Order, dated June 1, 2004.)

After briefing and oral argument, the New Hampshire Supreme Court, in an Order dated September 13, 2004 (the “September 13 Order”), vacated the April 29 Order approving the Proposed Agreement with the AFIA Cedents, and again remanded the case to the Superior Court. It specifically directed the Superior Court to consider five issues upon remand:

- (1) Whether the New Hampshire liquidation proceedings should be stayed pending the completion of the regulatory and judicial proceedings in the United Kingdom;
- (2) Whether the Superior Court has an independent obligation to assess the fairness of the Proposed Agreement with the AFIA Cedents;
- (3) Whether the intervenors have standing to contest the Proposed Agreement;
- (4) Whether the “Necessity of Payment Doctrine” or some other equitable doctrine authorizes the Liquidator or the Superior Court to vary the mandatory priorities set forth in RSA 402-C:44; and
- (5) Whether the proposed payments to the AFIA Cedents qualify as administrative expenses under RSA 402-C:44, I.

(September 13 Order at 2.) The Supreme Court also stated that the Superior Court “shall support its determinations on these issues with factual findings, as appropriate.” (*Id.*)

Following conferences with counsel and the submission of papers regarding a draft order, the Superior Court issued the Order on Remand and ruled, *inter alia*, that (1) the ACE Companies have standing to contest the Proposed Agreement; (2) consideration of a stay of the New Hampshire proceedings is not appropriate; (3) equitable doctrines such as the Necessity of Payment doctrine do not authorize the Liquidator to deviate from the statutory distribution scheme set forth in RSA 402-C:44; and (4) an evidentiary hearing on whether the Proposed Agreement with the AFIA Cedents is necessary, fair and reasonable will be deferred until after a further ruling by the Supreme Court on the administrative expense issue. (*See* Order on Remand at 4-6, 10-13.)

In response to the Supreme Court’s specific inquiry whether the proposed payments to the AFIA Cedents qualify as administrative expenses under RSA 402-C:44, I, the Superior Court ruled that such payments would be administrative expenses authorized under RSA 402-C:1, III and IV; 402-C:25, IV, VI, and XXII; and RSA 402-C:44, I. (*See* Order on Remand at 6-10.) The Superior Court granted the ACE Companies and Benjamin Moore leave to appeal the legal issue of whether the proposed payments to the AFIA Cedents qualify as administrative expenses. (*Id.* at 14.)

## **II. Statement of Facts**

Century, ACE P&C, PEIC, and AARe are members of the ACE Companies. (Durkin Aff., Jt. App. at 77, ¶ 4.)<sup>1</sup> All of the ACE Companies are incorporated in Pennsylvania with their principal place of business in Philadelphia. (*Id.*)

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<sup>1</sup> Reference to the Joint Appendix (“Jt. App.”) is to the Joint Appendix of the ACE Companies and Benjamin Moore submitted to the New Hampshire Supreme Court in connection with the original appeal. The “Motion” referred to below is the Liquidator’s motion for approval of the Proposed Agreement, which was filed on February 11, 2004.