

THE STATE OF NEW HAMPSHIRE
SUPREME COURT

In the Matter of the Liquidation of
The Home Insurance Company

No. 2005-0740

ACE COMPANIES' MOTION FOR LEAVE TO FILE REPLY

Appellants 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, Lovells and Orr & Reno P.A., respectfully submit this request for leave to file a reply to the Liquidator's Objection to the ACE Companies' Motion to Strike certain portions for the briefs submitted by the National Association of Insurance Commissioners (the "NAIC") and the Commissioner of Insurance as Liquidator of the Home Insurance Company (the "Liquidator"). ACE Companies further state:

1. ACE Companies seeks leave to file a reply to address the Liquidator's unsupported assertion that the Court may take judicial notice of the challenged portions of its brief and the NAIC brief that are outside the record in this appeal. The doctrine of judicial notice applies to matters that are uncontroverted and generally accepted (such as scientific facts). *See* N.H. Rule Evid. 201. The Liquidator attempts to expand to the judicial notice doctrine beyond its limited application by asking the Court to draw inferences from post-hearing facts that he has inaccurately characterized.¹

2. Even more importantly, the Liquidator has utterly failed to establish, as he must, that the evidence he and the NAIC would like to introduce for the first time on appeal is relevant to the

¹ The Liquidator attempts to portray the proceedings before the High Court of Justice in England (the "High Court") as "foreign law" of which this Court may take notice. (Liquidator's Obj. at ¶ 3.) However, there are no English law issues involved in this case, so clearly the Liquidator is attempting to present the proceedings as a "fact" from which the Court should draw an inference (*i.e.*, that the Proposed Agreement is fair, reasonable and necessary). The High Court itself stated that no such inference should be drawn. (*See* L.A. 590 at ¶ 22.)

issues before the Court. *See* Sup. Ct. Rule 16(6) (stating that irrelevant or immaterial submissions are improper and may be disregarded). The Liquidator, for example, has made reference to the proceedings before the High Court. He does not, however, explain how the High Court proceedings regarding the approval of a scheme of arrangement under English law are in any way material to the Court's consideration of the issues on this appeal, which concern the fairness, reasonableness and necessity of the Proposed Agreement under New Hampshire law.

3. If given an opportunity to reply, the ACE Companies would also show that the NAIC's recent actions in adopting the Insurer Receivership Model Act ("IRMA") are irrelevant. The Liquidator argues that the revisions in IRMA and one of the drafting notes adopted by the NAIC are "clearly pertinent to [the] interpretation of the New Hampshire statutes" (Liquidator's Obj. at ¶ 6), without stating how they are at all material to the issues on appeal. The Liquidator's appellate brief is marred by the same failure to articulate any valid reason for this Court to consider the IRMA revisions and drafting note. (*See* ACE Companies' Reply Br. at 1, 3-5.) These omissions are not surprising, since an examination of the IRMA revisions and drafting note shows that they do not in fact relate to the situation presented in this appeal. On reply, the ACE Companies would demonstrate to the Court why this is so.

4. ACE Companies would also like an opportunity to respond to the Liquidator argument that IRMA is "not a new issue" because earlier NAIC proceedings concerning IRMA were discussed at the July 2005 evidentiary hearing before the Superior Court. (Liquidator's Obj. at ¶ 6.) The fact that NAIC proceedings from the pre-July 2005 period are part of the appellate record does not mean that NAIC proceedings from the post-July 2005 period are relevant. The Superior Court only took into account the former, and not the latter. Moreover, the ACE Companies will show the Court that the Liquidator, in citing to the post-July 2005 proceedings, is not adding anything new or relevant and is instead attempting to perpetuate an incorrect inference from the pre-July 2005 proceedings that the Superior Court drew.

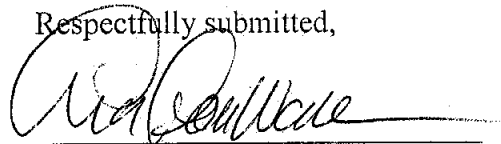
5. WHEREFORE, the ACE Companies respectfully request that this Court enter an order:

A. Granting them leave to file a reply to the Liquidator's Objection to the ACE Companies' Motion to Strike; and

B. Granting such other and further relief as this Court deems just and proper.

March 16, 2006

Respectfully submitted,



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Certificate of Service

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