

**THE STATE OF NEW HAMPSHIRE
SUPREME COURT**

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

No. 2004-0319

MOTION TO DISMISS

NOW COMES the appellee, Roger A. Sevigny, Commissioner of Insurance for the State of New Hampshire, in his capacity as Liquidator of The Home Insurance Company, (the "Liquidator") by and through counsel, the Office of the Attorney General, and pursuant to Supreme Court Rule 25(7) moves this Court to dismiss the appeals entered by Century Indemnity Company, ACE Property and Casualty Insurance Company, ACE American Reinsurance Company, and Pacific Employers Insurance Company (the "ACE Companies") and Benjamin Moore & Company ("BMC"), for lack of subject matter jurisdiction because these appellants lack standing to bring their appeals. These appellants lack standing, because none is a "person aggrieved" who will suffer "a legal injury against which the law was designed to protect" as a result of the Order appealed from.

In support hereof, the Liquidator submits his Memorandum of Law in Support of Motion to Dismiss, a copy of the Order of the Merrimack County Superior Court, McGuire, J., dated April 29, 2004, the Affidavit of Jonathan Rosen dated May 27, 2004, a copy of the Affidavit of Jonathan Rosen dated March 26, 2004, and a copy of the Transcript of the Hearing before the Merrimack County Superior Court on April 23, 2004 ("Transcript April 23, 2004"), in the proceedings below.

WHEREFORE, the Liquidator prays that this Honorable Court enter an order dismissing the appeals entered by the ACE Companies and BMC, and granting such other and further relief as may be just.

Respectfully submitted,

ROGER A. SEVIGNY, INSURANCE
COMMISSIONER OF THE STATE OF NEW
HAMPSHIRE, SOLELY IN HIS CAPACITY AS
LIQUIDATOR OF THE HOME INSURANCE
COMPANY,

By his attorneys

PETER W. HEED, ATTORNEY GENERAL

/ s /

Peter C.L. Roth
Senior Assistant Attorney General
NEW HAMPSHIRE DEPARTMENT OF JUSTICE
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June 1, 2004

I, Peter C.L. Roth, hereby certify that on June 1, 2004, two copies of this Motion to Dismiss were served on counsel to the appellants, Ronald L. Snow, Esq., Orr & Reno, and Eric D. Jones, Esq., Downs Rachlin Martin PLLC, by first class mail, postage prepaid.

Dated: June 1, 2004

/ s /

Peter C.L. Roth