

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

Docket No. 03-E-0106

2004 MAY -6 P 1:27

In the Matter of the Liquidation of

The Home Insurance Company

SUPERIOR COURT
MERRIMACK COUNTY

**MOTION TO TRANSFER QUESTION OF
LAW FOR INTERLOCUTORY APPEAL**

Respondents Century Indemnity Company, ACE Property and Casualty Insurance Company, Pacific Employers Insurance Company, and ACE American Reinsurance Company (collectively, the "ACE Companies") respectfully move this Court to transfer, for interlocutory appeal pursuant to Rule 8 of the New Hampshire Supreme Court Rules, the question of law identified in the annexed Interlocutory Appeal Statement. In support of this Motion, the ACE Companies state as follows:

1. For the reasons set forth in the Interlocutory Appeal Statement, there is a substantial basis for a difference of opinion on the issue decided in this Court's Order of April 29, 2004 (the "Order"), in which the Court granted a motion (the "Motion") by the Liquidator of Home Insurance Company (the "Liquidator") for approval of a proposed agreement (the "Proposed Agreement") that the Liquidator had entered into with the AFIA Cedents (as that term is defined in the Motion). The Court held that the Proposed Agreement is authorized under § 402-C:25 of the New Hampshire Insurers Rehabilitation and Liquidator Act, N.H. Rev. Stat. Ann. § 402-C:1, *et seq.* (the "Act"), and is consistent with the goals and purposes of the Act. (Order at 2.) The Proposed Agreement, however, directly contravenes the mandatory order of distribution established by the Legislature in § 402-C:44 of the Act. Moreover, the Court's approval of the Proposed Agreement is based on an overly broad interpretation of the

Liquidator's discretion that finds no support in the Act or in any applicable case law. The Court also approved the Proposed Agreement in the absence of any discovery or an evidentiary hearing on the complex factual issues involved, which were critical to the determination of whether the Liquidator exercised his authority reasonably in entering into the Proposed Agreement.

2. In addition, granting an interlocutory appeal from the Order (a) would materially advance the termination of the litigation and clarify further proceedings because it would determine the rights and obligations of the ACE Companies with respect to the claims of the AFIA Cedents against Home; (b) would afford the ACE Companies an opportunity to prevent the substantial and irreparable injury that they would suffer if an appeal of the Order were delayed until the conclusion of the liquidation; and (c) would allow the Supreme Court to decide an issue of great importance in the area of insurance company liquidations. Indeed, the Court noted that the issue presented by the Motion "is one of first impression." (Order at 1.)

3. The ACE Companies respectfully request an expedited consideration of this motion, given that the bar date for the filing of claims is rapidly approaching. The Liquidator has similarly recognized the importance of an early resolution of the issues presented by the Proposed Agreement. Indeed, at the last hearing, counsel for the Liquidator indicated that he planned to appeal immediately any adverse ruling.

4. Because of the nature of this motion, it is reasonably assumed by counsel for the ACE Companies that it would be futile to obtain the concurrence of the Liquidator to the relief sought.

5. No memorandum of law has been filed with this motion as the grant or denial of the relief sought is within the discretion of this Court.

Date: May 6, 2004

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned certifies that he served a copy of the foregoing on the following counsel via First Class mail unless otherwise indicated on May 6, 2004.

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