

**THE STATE OF NEW HAMPSHIRE**

**MERRIMACK, SS.**

**SUPERIOR COURT**

**Docket No. 03-E-0106**

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

**LIQUIDATOR'S RESPONSE TO ACE COMPANIES' OBJECTION TO  
LIQUIDATOR'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Roger A. Sevigny, Commissioner of Insurance for the State of New Hampshire, as Liquidator ("Liquidator") of The Home Insurance Company ("Home"), reluctantly and briefly hereby responds to the ACE Companies' Objection to Liquidator's Proposed Findings of Fact and Conclusions of Law ("Objection") dated August 16, 2005. The Liquidator had understood that no further submissions were to be made in this matter after August 12, 2005. Nevertheless, the ACE Companies have now objected to the Liquidator's Proposed Findings of Fact and Conclusions of Law. The Liquidator respectfully requests that the Court consider this brief response.

1. Notwithstanding the ACE Companies' selective quotation from the transcript of the Evidentiary Hearing [Objection at 5, ¶ 18], it is readily apparent that: (i) the issue of how findings of fact would correlate to the Court's conclusions of law, including the Order on Remand, was an issue of considerable sensitivity to the ACE Companies [Tr. V: 207-07]; (ii) the Liquidator disagreed with the ACE Companies' position on the issue [Tr. V: 207:6-9]; and, (iii) the Court authorized the Liquidator to offer such proposed conclusions of law, to which the ACE Companies could object. [Tr. V:207:12-19] The Liquidator did exactly that in his Proposed Findings of Fact and Conclusions of Law. Knowing this would occur, the ACE Companies and Benjamin Moore & Company accordingly offered their arguments on the necessity question in their August 12, 2005 memoranda.

2. The ACE Companies were clearly advised of the purpose of the Evidentiary Hearing (namely, whether the agreement with AFIA Cedents is necessary, fair and reasonable) prior to discovery (the October 8, 2004 Order on Remand) during discovery (May 12, 2005 Order) and at the conclusion of discovery (June 28, 2005 Order on Discovery). The issue was even raised in a colloquy between the ACE Companies' counsel, Liquidator's counsel and the Court during ACE Companies' counsel's opening statement. [Tr. I:26-27] Five full days of testimony and over ninety exhibits create an extensive evidentiary record upon which the Court may choose to base its findings of fact and conclusions of law.

3. The ACE Companies' arguments [Objection at 1-6] preview those they intended to make on appeal concerning the Order on Remand, which forcefully illustrate why the Court should adopt the Liquidator's proposed conclusions of law on the necessity issue. The Court's Order on Remand is interlocutory and the Court may modify that Order as it sees fit. See Sup. Ct. R. 8(4) ("supreme court's refusal to accept an interlocutory appeal shall be without prejudice to any challenge to the lower court's order"); Super. Ct. R. 141 (interlocutory orders "preparatory to a hearing upon the merits"); see also N.E. Redlon Co. v. Franklin Square Corp., 91 N.H. 502, 503 (1941) ("Discretionary or interlocutory orders of the Superior Court do not result in an adjudication of the rights of the parties until the case goes to final judgment.")

4. Finally, it is improper for the ACE Companies to have specifically responded to the Liquidator's Proposed Findings of Facts. [Objection at 6-15] It is the Court's role, as factfinder, to deal with the evidence having heard the testimony. 93 Clearing House, Inc. v. Khoury, 120 N.H. 346, 350 (1980) ("Weighing the evidence is the proper function of the factfinder...The trier of fact is in the best position to measure the persuasiveness of evidence and the credibility of witnesses"). The Liquidator accordingly urges the Court to disregard pages 6-15 of the Objection. If the Court, however, is prepared to consider those points, then the

Liquidator should be provided an opportunity to address the numerous errors (including evidentiary inaccuracies) in the ACE Companies' Request for Findings of Fact and Rulings of Law as well as the Objection itself.<sup>1</sup>

5. For the reasons described in the Liquidator's Memorandum Concerning Proposed Findings of Fact and Conclusions of Law, the Court should accordingly make the findings of fact and conclusions of law proposed in the Liquidator's Proposed Findings of Fact and Conclusions of Law.

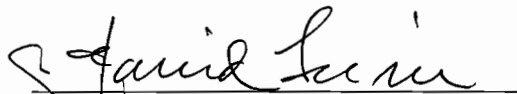
Respectfully submitted,

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HAMPSHIRE, AS LIQUIDATOR OF THE HOME  
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August 17, 2005

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<sup>1</sup> For example, the ACE Companies' claim that the Liquidator's proposed findings are based upon inadmissible evidence is beside the point. The exhibits and testimony cited by the Liquidator were already admitted into evidence by the Court, in large part without objection by the ACE Companies.

Certificate of Service

I hereby certify that a copy of the foregoing Liquidator's Response to the ACE Companies' Objection to Liquidator's Proposed Findings of Fact and Conclusions of Law was sent, this 17<sup>th</sup> day of August, 2005, by first class mail, postage prepaid to all persons on the attached service list.

  
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J. David Leslie

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

In the Matter of the Liquidation of  
The Home Insurance Company  
Docket No. 03-E-0106

In the Matter of the Liquidation of  
US International Reinsurance Company  
Docket No. 03-E-0112

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