

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

**MEMORANDUM REGARDING LIQUIDATOR'S
"RESPONSE" TO ACE COMPANIES' OBJECTION**

Respondents 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 Memorandum regarding the Liquidator's Response to ACE Companies' Objection to Liquidator's Proposed Findings of Fact and Conclusions of Law dated August 16, 2005 ("Liquidator's Response") and state as follows:

1. It is ironic that the Liquidator complains about the ACE Companies' Objection being unexpected or unauthorized because, as the Liquidator notes, the Court expressly granted the ACE Companies permission to object to the Liquidator's proposed findings of fact and rulings of law. (Vol. 5-B, at 207:18-19.) If anything is unauthorized, it is the Liquidator's Response because the Court did not allow the Liquidator to file further papers.

2. The ACE Companies clearly noted in their Objection that the Court gave the Liquidator permission to propose additional findings of fact and rulings of law. (Objection at ¶ 2 n.1.) The key, however, is that the Court did so after agreeing with the ACE Companies' view of the scope of the findings and rulings:

Mr. Lee: Can we just get clarification that the purpose of the findings of fact and conclusions of law are simply directed to the issue of fairness and reasonableness or necessary, fairness and reasonableness and the parties are not going to use this as an opportunity to address the other issues in your order on remand?
I don't want to see a record that relates to administrative expenses or necessity or comity, it's this one issue; I want to be clear that that's what we're doing.

The Court: Yes, that's the issue of the evidentiary hearing this week.

Mr. Leslie: The Court has already ruled as a matter of law on the administration [sic] expenses question.

Mr. Lee: I want to be clear that none of the five issues that were sent back from the Supreme Court with the exception of the question of reasonableness and fairness are what's going to be addressed in the findings of facts and conclusions of law.

The Court: Right.

(Vol. 5-B, at 206:10-207:5.)

3. Two other points stand out from this exchange. First, counsel for the Liquidator concedes that the Court has already ruled on the administrative costs issue as a matter of law. That being the case, there is no need for further findings or rulings.

4. Second, at the hearing, both the Court and the ACE Companies maintained the critical distinction between the use of the word "necessary" in the Order on Remand (*i.e.*, where the Court refers to the issue as whether the Agreement is necessary, fair and reasonable) and the use of the word "necessary" in the statutory definition of administrative costs (*i.e.*, "the actual and necessary costs of preserving or recovering" assets of the estate.)

5. In the Liquidator's Response, the Liquidator continues to ignore this distinction and misleadingly suggests that it was the Court's intent to make findings and rulings on the administrative costs issue after the hearing. As noted in the Objection (and conceded by counsel for the Liquidator at the hearing), the Court has already ruled on this issue -- it would be both inappropriate and unnecessary to supplement the record with findings and rulings.

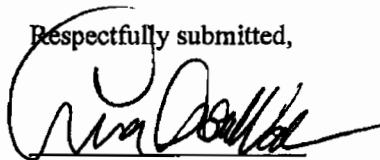
6. The Liquidator tries to argue that the Court should modify its administrative costs ruling in the Order on Remand (Liquidator's Response at ¶ 3), but he provides no basis for doing so. The Liquidator (unlike the ACE Companies) has not cited any new evidence that would alter the earlier order; his request for findings and ruling regarding administrative costs is nothing more than an improper attempt to bolster the record.

7. In any event, the Liquidator should be precluded from seeking a supplemental ruling or modification of the Order on Remand because he, along with the other parties,

agreed that the administrative costs issue should be decided as a matter of law and then appealed based on the record before the Court as of October 2004.

8. Finally, there is no merit to the Liquidator's suggestion that the Objection contains "numerous errors" or that the ACE Companies have accused the Liquidator of relying on inadmissible exhibits. (Liquidator's Response at ¶ 4.) The ACE Companies' point, which is clear from the context, is that the Liquidator failed to support his proposed findings with evidence that is in the record. The ACE Companies have highlighted, for the Court's convenience, the areas where the Liquidator strayed from the actual evidence.

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing pleading has been served on Roger A. Sevigny, Commissioner of Insurance, Peter Bengelsdorf, Special Deputy, and the following counsel via First Class mail on August 18, 2005:

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