

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**

**ACE COMPANIES' REQUEST FOR EVIDENTIARY
HEARING AND SUBMISSION OF REPLY PAPERS ON
MOTION FOR RECONSIDERATION OF ORDER ON REMAND**

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, Orr & Reno P.A., respectfully submit this request, pursuant to Rule 57 of the Rules of the Superior Court, for an evidentiary hearing and the submission of reply papers regarding the ACE Companies' motion for reconsideration of the Order on Remand dated October 8, 2004 (the "Motion for Reconsideration"). In support of their request, the ACE Companies state as follows:

1. Roger A. Sevigny, the Insurance Commissioner for the State of New Hampshire and liquidator (the "Liquidator") of Home Insurance Company, filed an opposition to the Motion for Reconsideration yesterday. Counsel for the ACE Companies received a courtesy copy of the opposition just before 6:00 p.m. yesterday.

2. The Liquidator's opposition raises several critical issues of fact that should be resolved at an evidentiary hearing. Specifically, the Liquidator has made representations concerning the motivation for the introduction of the Proposed Amendment, the circumstances surrounding its withdrawal, the actions of the Committee considering the Proposed Amendment, and the proceedings before the NAIC working group. A hearing would allow the ACE

Companies to submit evidence to the Court rebutting the Liquidator's factual assertions, many of which are not properly supported. *See* Super. Ct. R. 57 (noting that facts in opposition papers must be verified by affidavit or must be apparent from the record.) In order to streamline the hearing and narrow the issues for the Court, the ACE Companies further respectfully request an opportunity to submit reply papers.

3. There are, however, at least two factual matters that may be addressed preliminarily in this response. First, it is not the case that, as the Liquidator claims, the ACE Companies waited three weeks to file the Motion for Reconsideration. The bill from which the Proposed Amendment was withdrawn, S.B. 74, was heard by the full Senate on February 10, 2005; the ACE Companies had to make sure that the Liquidator made no effort to introduce the Proposed Amendment again on the Senate floor. The Motion for Reconsideration was filed twelve business days after the consideration of S.B. 74 by the full Senate. Second, the Liquidator has alleged that the NAIC working group did not adopt similar language on the grounds that it is "unnecessary." (Opp'n at ¶ 8.) As discussed in the Motion for Reconsideration, the Reinsurance Association of America (the "RAA") submitted a statement to the Committee in which it noted that the NAIC working group (in sessions attended by the RAA) found that accepting the proposed change to the administrative expense provision of the Model Act would be "potentially dangerous." (Ex. 4 to Motion for Reconsideration.)

4. In addition to the specific factual issues identified above, the Liquidator's opposition raises two overarching questions that should be heard by the Court, which are (1) why the Liquidator introduced what is akin to a bill of attainder in the civil context without any notice to the Court or interested parties; and (2) what explains the hurried withdrawal of the Proposed

Amendment other than the fact that the Liquidator did not have enough votes in support of the legislation from the Committee members.

WHEREFORE, the ACE Companies respectfully request that the Court (a) schedule an evidentiary hearing at its earliest convenience; and (b) permit the ACE Companies to file reply papers on the Motion for Reconsideration in advance of any such hearing.¹

Respectfully submitted,



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American Reinsurance Company

¹ Even if the Court is inclined to deny the request for an evidentiary hearing, the ACE Companies believe that the submission of reply papers would greatly assist the Court and, at a minimum, they respectfully request the opportunity to do so.

CERTIFICATE OF SERVICE

The undersigned certifies that I served a copy of the foregoing on the following counsel via First Class mail on March 3, 2005

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