

THE STATE OF NEW HAMPSHIRE

MERRIMACK,SS

SUPERIOR COURT

DOCKET NO. 03-E-0106

IN THE MATTER OF THE REHABILITATION OF
THE HOME INSURANCE COMPANY

EMERGENCY EX PARTE MOTION TO INTERVENE OF MISTY DAWN STAPEL,
and
PARTIAL OBJECTION TO ORDER OF LIQUIDATION
and
TEMPORARY AND PERMANENT INJUNCTION
AS TO ANY RELEASE OF LIABILITIES OF
RISK ENTERPRISE MANAGEMENT LIMITED

Now comes the Petitioner, Misty Dawn Stapel, and moves as follows:

1. Misty Dawn Stapel (hereinafter "Stapel"), is a Plaintiff in a matter that is presently pending in the United States District Court for the Northern District of West Virginia, at Wheeling, West Virginia, Civil Action No.5:03CV33.
2. That action is against the following Defendants:
 - A. Risk Enterprise Management Limited (hereinafter "REM"), a member of the Zurich Group, which is an actual and/or ostensible agent of Defendant Zurich Insurance Company assigned to carry out Zurich Insurance Company's control over certain business operations of The Home Insurance Company (hereinafter "Home"), including business operations in West Virginia.
 - B. Zurich Insurance Company, (herinafter "Zurich"), which is a corporation conducting business in West Virginia that controlled the business operations of Home, and insurer that issued policies in West Virginia.
 - C. John Reamer (hereinafter "Reamer"), a former senior claim representative of Home and is a designated representative of Home in a civil action pending in the United States District for the Northern District of West Virginia entitled The Home Insurance Company v. Misty Dawn Stapel, Harry Stapel and Marsha Stapel, Civil Action No. 5:00CV99, ("THE UNDERLYING LITIGATION") and is a resident of the State of Arizona.
 - D. Mark Lauderbaugh, (herinafter "Lauderbaugh"), a former casualty liability supervisor of Home and is a resident of the State of Pennsylvania.
3. The action that has been brought by Stapel against the Defendants named above is in response to THE UNDERLYING LITIGATION, which is an attempt by Home and its representatives to confirm a settlement that was made arising out of an injury to a minor that was never approved by the appropriate court in the State of West Virginia at the time of the alleged

settlement, as well as an attempt by Home to confirm certain acts which have been called into question as set forth in the eventual action filed by Stapel's attorney, Thomas C. Schultz, of The McLain Building, Suite 333, 40-12th Street, Wheeling, West Virginia 26003, being the action referred to above as Civil Action No.5:03CV33.

4. Attorney Schultz contacted Attorney David M. Gottesman on June 5, 2003, when he received notice that the proposed Order of Liquidation that was to be submitted to the Merrimack County Superior Court for a hearing and approval on January 9, 2003, contained provisions in it that were different from those provisions that were posted on the website of the New Hampshire Insurance Department, in that the proposed Order of Liquidation at page 4, paragraph (n) 2, contained protections afforded to REM, when REM is not entitled to those protections under such an order. Those provisions relate not only to Home, but permanently restrain and enjoin the following actions:

(2) commencement or continuing any judicial, administrative, or other action or proceeding against The Home's, the Rehabilitator's, or the Liquidator's present or former directors, officers, employees, agents, representatives, or consultants, including, without limitation, Risk Enterprise Management Limited and each of its officers, directors and employees, arising from their actions on behalf of the Home, the Rehabilitator or the Liquidator;

5. This sort of protection would have the effect of precluding the pending actions brought by Stapel in West Virginia, which include claims of Civil Conspiracy, Fraud, Outrage and/or Intentional Infliction of Emotional Distress, and Abuse of Process, which would certainly deprive Stapel of her rights to litigate these issues in the Courts of West Virginia.

6. REM is not a party that is subject to the proposed Liquidation, yet is being afforded certain protections, if the Order of Liquidation is approved by this Honorable Court, to which it is not entitled.

7. Attorney Thomas Schultz sent a letter to Peter Roth, Esq., Senior Assistant Attorney General, on March 10, 2003, setting forth the salient issues that were before the Court in West Virginia, and the concerns that he had with the participation of REM in the proceedings of Liquidation in New Hampshire of Home.. He even questioned whether all of the allegations that were made in the proceedings in West Virginia as to REM were made known to the Insurance Commissioner. This letter (attached as Exhibit A hereto) followed a telephone call from Attorney Schultz to Attorney Roth discussing the situation in detail, and raising the possible conflict of interest of REM continuing in any significant role in the liquidation.

8. The proposed Order of Liquidation also contains a provision that allows the Liquidator to employ or delegate authority for the liquidation to anyone it deems appropriate, and then specifically says:

The Liquidator is authorized to continue at her sole discretion to retain the services of Risk Enterprise Management Limited, subject to court approval;

9. Attorney Schultz advises that in light of the allegations of misconduct of REM, as set forth in the action brought by Stapel, the presence of REM in any capacity on behalf of the Liquidator is inappropriate and a conflict of interest. Without a full examination of the allegations by this Honorable Court as set out in the Stapel action, that allowing the appointment of REM would amount to the fox watching the hen house.

10. A copy of the underlying Amended Complaint in Civil Action No.5:03CV33. of Stapel is attached hereto as Exhibit B. (It may be important to note that a settlement between the Petitioner and Home and REM was to be made for significant monies, but the Liquidation of Home has at least put a delay in those efforts)

11. In response to the plea for assistance from Attorney Schultz, Attorney David M. Gottesman contacted the Attorney Peter Roth of the Attorney General's Office, and discussed the situation with him on the afternoon of June 5, 2003. Attorney Gottesman conveyed that there was no objection to the Order of Liquidation of Home, but that the provisions that were referred to above in paragraphs 4 and 8 were objectionable. Attorney Roth indicated that he would be discussing this with his colleagues and would get back to Attorney Gottesman by Friday, June 6, 2003. He initially indicated that he was leaning toward taking out all provisions that related to REM, because no deal had yet been struck with REM, but no commitment was made at that time.

12. On June 6, 2003, at 12:34 PM while Attorney Gottesman was attending the "Here Come the Judges" seminar for the New Hampshire Trial Lawyers Association in Manchester, which he was scheduled to moderate in the afternoon, a voicemail message was left by Attorney Roth that said the following:

Dave, This is Peter Roth at the Attorney General's Office. I know you left me a cell number, but I can't put my hands on it right now, but I will leave you this message. After talking about it with our team, we have concluded that we cannot and will not remove the reference to REM from the proposed order as it is currently before the Court that is the revised proposed order that was submitted 10 days ago or so, will be what we attempt to get signed by the Judge on Monday morning. So, I guess that will leave you to whatever you need to do, although I would object to your being heard on Monday because you haven't filed anything and it is just not the right time; Anyway, sorry we could not work it out. Hopefully, it will go over any way.

13. In light of this response from Attorney Roth, it is necessary to ask for relief from this Honorable Court.

14. That there is no adequate remedy at law.

15. That unless the Court exercises its equitable powers, the rights of Stapel will be adversely affected.

16. That the Petitioner, Misty Dawn Stapel, ought to be allowed to enter this case as an intervenor, and to present her position as to the matters alleged herein.

17. That this Court ought not feel hurried in making an order allowing REM to escape responsibility for its prior bad acts, and should not feel compelled to allow REM to participate on behalf of the Liquidator in any capacity until such time as the Liquidator can learn more about the merits of the Stapel allegations in West Virginia, so as to preclude an embarrassing situation for the Insurance Commissioner of the State of New Hampshire, and the State of New Hampshire itself.

18. That the Petitioner, Stapel, requests a hearing on this pleading, whether it be on June 9, 2003, or at a later date, provided that this Honorable Court does not grant the Order of Liquidation in the meantime.

19. That without the Emergency and other relief requested by the petitioner, substantial injustice will be done.

WHEREFORE, the Petitioner, Misty Dawn Stapel, prays this Honorable Court:

- A. Allow the Petitioner to intervene in this matter.
- B. Allow the Petitioner to be heard at the hearing on June 9, 2003.
- C. In the alternative, continue this matter for a hearing at a later date.

On a Temporary basis, pending a hearing on the merits:

D. Restrain and enjoin the Liquidator from obtaining through this Honorable Court any order which in any way releases liabilities or enjoins or restricts any actions against any agents, representatives, or consultants of Home, including, without limitation, Risk Enterprise Management Limited and each of its officers, directors and employees, arising from their actions on behalf of the Home, the Rehabilitator or the Liquidator; and

E. Restrain and enjoin the Liquidator from obtaining through this Honorable Court any order which in any way allows the Liquidator to be authorized to continue at her sole discretion to retain the services of Risk Enterprise Management Limited; and

F. Grant a hearing on this request for Temporary Injunction as soon as is possible.

G. Allow the Order of Liquidation of Home, but not with the references contained in paragraphs 4 and 8 of the proposed Order of Liquidation, as objected to in this Motion and Objection.

On a Permanent Basis:

H. Restrain and enjoin the Liquidator from obtaining through this Honorable Court any order which in any way releases liabilities or enjoins or restricts any actions against any agents, representatives, or consultants of Home, including, without limitation, Risk Enterprise Management Limited and each of its officers, directors and employees, arising from their actions on behalf of the Home, the Rehabilitator or the Liquidator; and

G. Restrain and enjoin the Liquidator from obtaining through this Honorable Court any order which in any way allows the Liquidator to be authorized to continue at her sole discretion to retain the services of Risk Enterprise Management Limited; and

G. Grant a hearing on this request for Permanent Injunction as soon as is possible.

H. Allow the Order of Liquidation of Home, but not with the references contained in paragraphs 4 and 8 of the proposed Order of Liquidation, as objected to in this Motion and Objection.

I. And for such other and further relief as may be deemed just.

Misty Dawn Stapel
By Her Attorneys
Gottesman and Hollis, P.A.

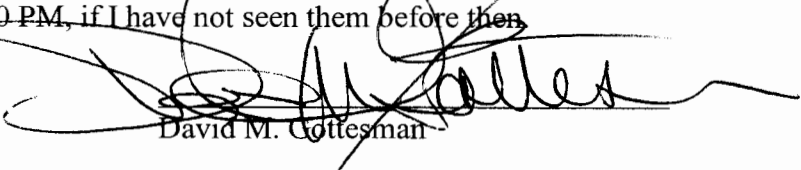
June 9, 2003



By: David M. Gottesman

CERTIFICATE OF SERVICE

On this the 9th day of June, 2003, I hereby certify that a copy of the within Emergency Ex Parte Motion to Intervene of Misty Dawn Stapel, and Partial Objection to Order of Liquidation, and Temporary and Permanent Injunction as to Any Release of Liabilities of Risk Enterprise Management Limited, and Exhibit A and B have been faxed to Peter Roth, Esq., counsel for the New Hampshire Insurance Commissioner, and to Martin Honigberg, Sulloway and Hollis, for Risk Enterprise Management Limited, and Sherilyn Young, Rath and Young, Representing Joy Ann Gardner and Robert Belanger, have been faxed to. I will provide them originals, if necessary, at Court on June 9, 2003 at 11:00 PM, if I have not seen them before then.



David M. Gottesman

CERTIFICATE OF CONCURRENCE

Attorney Roth has objected to the relief sought contained in the Emergency ex Parte Motion to Intervene of Misty Dawn Stapel, and Partial Objection to Order of Liquidation,

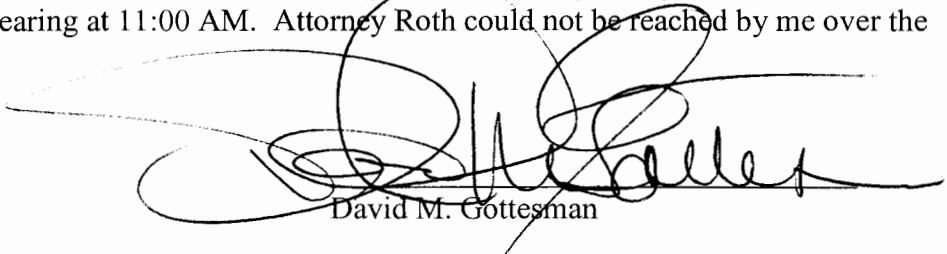
and Temporary and Permanent Injunction as to Any Release of Liabilities of Risk Enterprise Management Limited. I spoke with Attorney Honigberg, and he objects to the relief sought. In light of the timing of this filing, I was unable to speak with Sherrilyn Young to obtain her concurrence. I have no idea if she would object to the relief sought.



David M. Gottesman

EX PARTE REQUEST NOTIFICATION

I have telephoned each of the attorneys who have appearances in the case, and I have advised Attorney Honigberg personally, Attorney Young by voice mail on her cell phone, and Attorney Roth, by calling his office on the morning of June 9, 2003, that I will be appearing at the Merrimack County Superior Court on Monday, June 9, 2003, in the morning, to file this Ex Parte Motion to Intervene, and that they should plan on attending if they should wish to be heard in advance of the hearing at 11:00 AM. Attorney Roth could not be reached by me over the weekend.



David M. Gottesman