

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

ORDER RELATIVE TO STAY OF APRIL 29, 2004 ORDER

The ACE Companies seek a stay of this Court's Order of April 29, 2004 which granted the Liquidator's Motion for Approval of Agreement and Compromise of AFIA Cedents.

In initial response to the Order of April 29, 2004, the ACE Companies filed a Motion to Transfer Question of Law for Interlocutory Appeal. Subsequently, pursuant to Supreme Court Rule 7 (4), ACE Companies assumed active participation as parties in Supreme Court Case No. 2004-0139, a Rule 7 Notice of Mandatory Appeal filed by Benjamin Moore & Co., which seeks review of matters identical to those raised in the ACE Companies' Interlocutory Appeal Statement. Accordingly, the Motion to Transfer Question of Law for Interlocutory Appeal is moot and/or denied.

As parties to the Benjamin Moore & Co. Rule 7 Notice of Mandatory Appeal, the ACE Companies filed a Motion to Waive Filing of Motion to Stay in Superior Court with the Supreme Court. That motion was denied by the Supreme Court and the case was remanded for the limited purpose of ruling upon any motion to stay filed by ACE Companies. ACE Companies filed the pending Motion for Stay of Order Pending Mandatory Appeal Pursuant to Rule 7 on May 12, 2004. The Liquidator's Objection to ACE Companies' Motion for Stay was filed on May 25, 2004. The Court notes that ACE

Companies have filed a motion to expedite the Supreme Court's consideration of the matter on appeal.

The ACE Companies argue that a stay in this Court will protect them from irreparable injury because the Liquidator, absent a stay, will be free to move forward with proceedings in the UK to effect the agreement. The Liquidator challenges the ACE Companies' assertions that they will suffer irreparable harm absent a stay, noting that ACE Companies' obligations to the liquidation estate arise under contracts pre-dating the liquidation, and that the agreement at issue imposes no additional liabilities beyond the \$231 million already assumed by the ACE Companies.

In pleadings related to this matter, the Court has been urged by both the Liquidator and ACE Companies to refer to bankruptcy principles and case law in the absence of insurance liquidation/rehabilitation case law specifically on point. For purposes of determining what standards must be met by a movant seeking a stay pending appeal, the Court relies upon the standards outlined in In Re: Public Service Co. of New Hampshire, 116 B.R. 347 (NH 1990). Therefore, ACE Companies must demonstrate that absent a stay they will suffer irreparable harm and that harm to them will be greater than any harm imposed on the liquidation by a stay. The Court does not find that the ACE Companies have met their burden in demonstrating irreparable harm. Indeed, the Court fails to see any significant harm. On balance and to the contrary, the Court discerns significant potential for harm to the liquidation and to policyholder creditors should a stay be granted, as such a stay is likely to create uncertainty and unnecessary delay.

The ACE Companies have also argued that a stay will preserve the *status quo* pending appeal, avoiding the possibility that actions of the Liquidator to implement the scheme of arrangement will be rendered "unnecessary and wasteful" should the ACE Companies be successful on appeal. In that regard, the Court notes that an uncertainty relating to the outcome of the pending appeal is borne by the ACE Companies and the Liquidator alike. Prior to the agreement becoming operative, there are additional applications and regulatory approvals to be addressed within the context of the Provisional Liquidation in the United Kingdom, making it unlikely that the ACE Companies will be at actual risk for performance of their obligations in the near future. Moreover, actions that may be taken by the Liquidator or Ace Companies regarding the agreement in the context of the proceeding in the UK are matters that would be entirely within the control and discretion of each.

The ACE Companies Motion for Stay of Order Pending Mandatory Appeal to Rule 7 is DENIED.

SO ORDERED:

DATED: 6/1/04


Kathleen A. McGuire
Associate Justice