

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

Docket No. 217-2003-EQ-00106

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

**LIQUIDATOR’S RESPONSE AND OBJECTION TO ZURICH’S AND
WÜRTTEMBERGISCHE’S MOTION TO STAY ORDERS GRANTING
LIQUIDATOR’S MOTION FOR APPROVAL OF CLAIM AMENDMENT DEADLINE**

Christopher R. Nicolopoulos, Insurance Commissioner of the State of New Hampshire, as Liquidator (“Liquidator”) of The Home Insurance Company (“Home”), hereby responds to the motion of Zurich Insurance plc, German Branch and Württembergische Versicherung AG (“Zurich and Württembergische”) to stay the Order [Granting Liquidator’s Motion for Approval of Claim Amendment Deadline] (“Order”) and the Order Approving Claim Amendment Deadline, both dated January 28, 2021 and issued under Clerk’s Notices dated February 1, 2021 (the “Orders”). The motion (the “Motion to Stay”) requests a stay of the Orders “until such time to allow for resolution of the pending motion for reconsideration and any appeal to the New Hampshire Supreme Court.” Motion to Stay at 4.

1. The Liquidator does not oppose a stay of the Orders limited to the time until Zurich’s and Württembergische’s motion for reconsideration is resolved.¹ Mailing notice of the Claim Amendment Deadline to claimants with open claims where the Orders are subject to potential reconsideration creates the possibility for confusion. Further, the motion for reconsideration should be resolved relatively promptly so the stay should be brief. However, the Liquidator opposes the grant of a stay pending appeal. A request for stay pending appeal is

¹ The Liquidator will be filing a separate objection to Zurich’s and Württembergische’s motion for reconsideration.

premature. Such a request should only be considered after the Court's ruling on the motion for reconsideration, and in light of that ruling, the prejudice to Class II creditors, and Zurich's and Württembergische's incentive to delay.

2. In the Orders, the Court approved the Claim Amendment Deadline proposed by the Liquidator so that the Class II creditors may receive the full extent of available distributions in a timely fashion. Order at 5. Zurich and Württembergische are Class V creditors that do not stand to receive any distributions on their claims. They objected to the Liquidator's Motion for Approval of the Claim Amendment Deadline, and they have now filed motions to reconsider the Orders and to stay the Orders. Zurich and Württembergische state that they are "likely" to appeal to the New Hampshire Supreme Court. Motion to Stay at 1, 3.

3. The stay requested by Zurich and Württembergische is adverse to the interests of the Class II creditors. It will delay the Claim Amendment Deadline, and thus the determination of claims that is a prerequisite to making the final distribution to Class II creditors. As the Court concluded, the proposed Claim Amendment Deadline strikes a reasonable balance between the expeditious completion of the liquidation and the protection of unliquidated and undetermined claims. Order at 14. The requested stay undoes that balance and postpones the ultimate distribution to Class II creditors.

4. However, the Liquidator recognizes that there is a potential for confusion from the mailing of a Claim Amendment Deadline notice to claimants with open proofs of claim (as required by the Order Approving Claim Amendment Deadline) while a motion for reconsideration is pending. The time required to resolve the motion for reconsideration should be relatively brief. In the circumstances, the Liquidator does not oppose a stay of the Orders limited to the period until the motion for reconsideration is resolved.

5. By contrast, the request for stay pending appeal is premature and presents different considerations. At this point, any appeal is hypothetical, and consideration of whether to appeal will presumably depend in part on the Court's ruling on the motion for reconsideration. Moreover, the delay caused by a stay pending appeal is likely to be much greater than the delay from a stay pending reconsideration. An appeal could take considerable time, which would significantly prejudice the Class II creditors preferred by the New Hampshire statutes. See Order at 14; RSA 402-C:44, II. Finally, Zurich and Württembergische have an incentive to delay a Claim Amendment Deadline for as long as possible. Consideration of any stay pending appeal should accordingly include steps or commitments to expedite the appeal.

Conclusion

The Liquidator accordingly does not oppose a stay of the Orders limited to the period until the Court rules on Zurich's and Württembergische's motion for reconsideration. However, the request for a stay pending appeal should be denied without prejudice as premature.

Respectfully submitted,

CHRISTOPHER R. NICOLOPOULOS, INSURANCE
COMMISSIONER OF THE STATE OF NEW
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By his attorneys,

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February 16, 2021

Certificate of Service

I hereby certify that copies of the foregoing Liquidator's Response and Objection to Zurich's and Württembergische's Motion to Stay were sent this 16th day of February, 2021, by first class mail, postage prepaid to all persons on the attached service list, and by email to counsel for Zurich and Württembergische and other objectors participating at the hearing.

/s/ Eric A. Smith

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