

**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**

**LIQUIDATOR'S OPPOSITION TO NATIONWIDE'S  
MOTION TO INTERVENE**

Roger A. Sevigny, Commissioner of Insurance for the State of New Hampshire, as Liquidator ("Liquidator") of The Home Insurance Company ("Home"), hereby opposes Nationwide General Insurance Company's and Nationwide Mutual Insurance Company's (collectively, "Nationwide") Motion to Intervene dated August 10, 2005 ("Motion"). The Motion should be denied as it is untimely and Nationwide's intervention at this point would be unduly disruptive to the orderly resolution of this matter.<sup>1</sup>

1. Nationwide first filed a Motion to Intervene on July 22, 2005, the afternoon of the last business day before the start of the five-day evidentiary hearing. The Court heard argument from Nationwide's counsel at the beginning of the hearing and denied the motion but invited Nationwide's counsel to observe the hearing. See Trial Transcript ("Tr.") I:9-11. Four days later, on July 28, Nationwide filed a Motion for Reconsideration of the Court's denial of its motion. The next day the Court heard argument from Nationwide's counsel on its Motion for Reconsideration and denied the motion without prejudice. Tr. V:3-7.

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<sup>1</sup> In addition to the reasons discussed herein, the Court should deny the Motion because it is in essence a motion for reconsideration that fails to satisfy Superior Court Rule 58. That Rule requires that Nationwide "state, with particular clarity, points of law or fact that the Court has overlooked or misapprehended . . ." Nationwide does not articulate any points of law or fact that the Court overlooked or misapprehended, nor any change in circumstances since the Court denied its prior motions.

2. Now, more than seventeen months after the Liquidator filed his motion for approval of the Agreement with AFIA Cedents, and after the completion of extensive motion practice, a five day evidentiary hearing and nine months of discovery of the Liquidator by the ACE Companies and Benjamin Moore & Co., including extensive document production and eleven separate depositions of witnesses in New York and London, Nationwide asks the Court to grant it party status and suggests that it too may need to conduct discovery into these matters. See Motion at 6 n.9 (“The parties cannot claim prejudice by the addition of Nationwide because substantial new discovery is not required.” (emphasis added))

3. New Hampshire precedent does not support Nationwide’s Motion to Intervene at this point in the matter. Intervention, generally, is permissive. See Superior Ct. R. 139. “A trial court should grant a motion to intervene if the party seeking to intervene has a right involved in the trial and a direct and apparent interest therein.” Brzica v. Trustees of Dartmouth College, 147 N.H. 443, 446 (2002) (emphasis added). Nationwide, by contrast, seeks to intervene after the conclusion of a full evidentiary hearing on the merits.<sup>2</sup> The Court should exercise its discretion to deny this Motion. See id. at 446; Scamman v. Sondheim, 97 N.H. 280, 282 (1952). See also Wiebusch, § 6.30 at 140 (“A Petition to Intervene may be filed at any time before verdict or decree. However, a Petition to Intervene will be less likely to be granted the later in the case it is filed.”). No New Hampshire precedent cited by Nationwide or found by the Liquidator stands for the proposition that one may intervene after trial but before judgment enters. Cf. Town of Merrimack v. McCray, 150 N.H. 811, 812-13 (2004) (trial court erred in granting motion to intervene filed after parties reached settlement agreement).

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<sup>2</sup> Nationwide’s reliance on Superior Court Rule 188 is misplaced as that rule addresses practice in domestic relations cases. See Super. Ct. R. 172 (“Domestic relations proceedings are governed by the following Rules of Superior Court [172 -213].”).

4. The Court should not credit Nationwide's concerns about a lack of information because Nationwide has received sufficient information. Nationwide, as a significant AFIA Cedent and member of the Ruddy Pool, does not dispute that it was aware of the negotiation of the Agreement as early as February 2004, has filed a proof of claim in this proceeding, and ultimately voted in favor of the Scheme of Arrangement at the Scheme Creditors Meeting on September 8, 2004 in London, which its counsel attended on Nationwide's behalf. In fact, Nationwide's counsel conceded at the hearing that co-counsel "has been monitoring these proceedings and these agreements." Tr. V:4. Despite its admitted knowledge of, and involvement with, the Agreement, Nationwide now complains of a lack of information. See, e.g., Motion at 2 (seeking "access to the entire record"); 6-7 (lacking "pertinent information"). To the contrary, Nationwide has received substantial information. During the hearing, which its counsel attended in person, Nationwide received copies of the daily transcripts at the same time as the litigants. As requested by Nationwide's counsel, the Liquidator provided: (i) during the hearing, electronic copies of the Liquidator's exhibits; (ii) copies of ACE's hearing exhibits shortly thereafter; and, (iii) copies of deposition transcripts. In fact, the Liquidator has provided Nationwide with all information requested about this matter in a timely manner. Further, the pleadings in this matter have also been available in the public record and conveniently located on the Liquidation Clerk's website.

5. The Court should also dismiss Nationwide's concerns about an alleged lack of assurances sought from the Liquidator. Protests about being thwarted in its efforts to gather information at the February 17, 2005 hearing on the approval of an agreement with Agrippina are irrelevant. Motion at 10 and n.4. The February 17<sup>th</sup> hearing involved the Liquidator's motion for approval of an agreement with Agrippina, not the Agreement with AFIA Cedents. For

whatever reason, and despite its actual knowledge of the Agrippina agreement, Nationwide chose not to make a submission in a timely manner, just as it neglected to do so with regard to this matter. If Nationwide had concerns to raise its counsel should have objected to the Agrippina agreement within the allotted time after the Liquidator filed his motion for its approval in January of 2005. Instead, Nationwide deliberately sat on its rights. So too, Nationwide had ample opportunity to timely intervene in this matter.

6. Nationwide mistakenly claims that it must be made a party in order to participate in future appellate review of this matter. See Tothill v. Estate of Warren Center, 877 A.2d 213, 2005 N.H. LEXIS 109 at \*7 (N.H. June 24, 2005) (finding “party in interest” has standing to appeal despite not being party in action below). To the contrary, Supreme Court Rule 30 allows Nationwide, regardless of party status, to file an amicus brief “when accompanied by written consent of all parties to the case” or (without such consent) upon motion to the Supreme Court.<sup>3</sup>

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<sup>3</sup> The Liquidator would consent to Nationwide filing an amicus brief if the Supreme Court decides to hear an appeal taken from this matter.

**CONCLUSION**

For the foregoing reasons, Nationwide's Motion to Intervene should be denied.

Respectfully submitted,

ROGER A. SEVIGNY, INSURANCE  
COMMISSIONER OF THE STATE OF NEW  
HAMPSHIRE, AS LIQUIDATOR OF THE HOME  
INSURANCE COMPANY

By his attorneys,

KELLY A. AYOTTE  
ATTORNEY GENERAL

Suzanne M. Gorman  
Senior Assistant Attorney General  
Civil Bureau  
33 Capitol Street  
Concord, New Hampshire 03301-6397  
(603) 271-3650



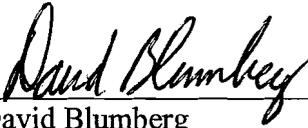
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J. David Leslie  
Eric A. Smith  
Rackemann, Sawyer & Brewster  
One Financial Center  
Boston, MA 02111  
(617) 542-2300

August 18, 2005

Certificate of Service

I hereby certify that a copy of the foregoing Liquidator's Opposition to Nationwide's Motion to Intervene was sent, this 18th day of August, 2005, by first class mail, postage prepaid to all persons on the attached service list.

  
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David Blumberg

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

In the Matter of the Liquidation of  
The Home Insurance Company  
Docket No. 03-E-0106

In the Matter of the Liquidation of  
US International Reinsurance Company  
Docket No. 03-E-0112

SERVICE LIST

Ronald L. Snow, Esq.  
Lisa Snow Wade, Esq.  
Orr & Reno  
One Eagle Square  
P.O. Box 3550  
Concord, New Hampshire 03302-3550

Gary Lee, Esq.  
Pieter Van Tol, Esq.  
Lovells  
16<sup>th</sup> Floor  
900 Third Avenue  
New York, New York 10022

Gail M. Goering, Esq.  
Adam Goodman, Esq.  
Eric Haab, Esq.  
Lovells  
One IBM Plaza  
330 N. Wabash Avenue, Suite 1900  
Chicago, Illinois 60611

Andre Bouffard, Esq.  
Eric D. Jones, Esq.  
Downs Rachlin Martin PLLC  
199 Main Street  
P.O. Box 190  
Burlington, Vermont 05402-0190

Peter G. Callaghan, Esq.  
Preti, Flaherty, Beliveau, Pachos  
& Haley, PLLP  
57 North Main Street  
P.O. Box 1318  
Concord, New Hampshire 03302-1318

Martin P. Honigberg, Esq.  
Sulloway & Hollis, P.L.L.C.  
9 Capitol Street  
P.O. Box 1256  
Concord, New Hampshire 03302-1256

George T. Campbell, III, Esq.  
Robert A. Stein, Esq.  
Robert A. Stein & Associates, PLLC  
One Barberry Lane  
P.O. Box 2159  
Concord, New Hampshire 03302-2159

David M. Spector, Esq.  
Dennis G. LaGory, Esq.  
Kristy L. Allen, Esq.  
Schiff Hardin LLP  
6600 Sears Tower  
Chicago, Illinois 60606

Jack B. Gordon, Esq.  
Fried, Frank, Harris, Shriver  
& Jacobson, LLP  
1001 Pennsylvania Avenue  
Washington, D.C. 20004

Andrew W. Serell, Esq.  
Rath, Young and Pignatelli  
One Capital Plaza  
P.O. Box 1500  
Concord, New Hampshire 03302-1500

Stephan P. Parks, Esq.  
Doreen F. Connor, Esq.  
Wiggin & Nourie, P.A.  
670 North Commercial Street, Suite 305  
P.O. Box 808  
Manchester, New Hampshire 03105-0808

Michael Cohen, Esq.  
Cohen & Buckley, LLP  
1301 York Road  
Baltimore, Maryland 21093