

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

In the Matter of Rehabilitation/Liquidation
of the Home Insurance Company

No. 03-E-106

ORDER ON PENDING MOTIONS

Intervenors' Motion for Expedited Hearing on Motion to Modify
is MOOT.

Rehabilitator's Motion to Admit Counsel Pro Hac Vice (David
Leslie and Eric Smith) is GRANTED.

Intervenor's Assented to Motions to Admit Counsel Pro Hac Vice
(Michael Ram and Michael Sandler) are GRANTED.

Petition to Intervene (Inspiration Consolidated Copper
Company, Phelps Dodge Corporation, and Phelps Dodge Miami, Inc.) is
GRANTED.

Motion to Intervene (Misty Dawn Stapel) is GRANTED.

The Motion of Joy Ann Gardner, Robert Blangeres and the
Certified 7-State Class They Represent to Modify Rehabilitation
Order and Scope of the Abatement of Cases in Any Future Liquidation

of The Home Insurance Company is **DENIED**. Joy Ann Gardner, Robert Blangeres and the Certified Class of homeowners they represent in seven Western states ("the Gardner Class") have intervened in this case as they are involved in litigation with an insured of The Home Insurance Company ("The Home"). The Rehabilitator objects to the Gardner Class's motion to modify. The Court heard this matter on June 9, 2003. After considering the parties' pleading and arguments, the Court finds and rules as follows.

I. BACKGROUND

Approximately three years ago, the Gardner Class filed a consumer protection class action suit against Stimson Lumber Company ("Stimson") in the State of Washington. Although it denies that it is responsible for providing liability coverage to Stimson in connection with the Gardner class action, The Home is one of three primary insurers paying Stimson's defense costs under a reservation of rights. The primary insurers filed a declaratory judgment in a federal court in Oregon to determine coverage.

On March 5, 2003, the New Hampshire Insurance Commissioner filed a Verified Petition of Rehabilitation of The Home. The same day, the Court (McGuire, J.) approved the Proposed Order Appointing Rehabilitator, which provides in pertinent part:

- (g) Any of the following are stayed:
 - (1) The commencement or continuation of a judicial, administrative, or other action or proceeding against The Home or any insured of The Home that was or could have been commenced before the commencement of this case, or to recover a claim against The Home that arose before the commencement of the Rehabilitation, for ninety (90) days, except as may be modified by further order of the Court[.]

Order dated March 5, 2003 at 2 (emphasis added).

The Oregon federal court stayed the declaratory judgment action. The Gardner Class does not challenge the stay of the declaratory judgment action. On March 12, 2003, Stimson moved the Washington Superior Court for a ninety-day stay in the class action suit based on the Rehabilitation Order. Along with its motion, Stimson submitted a copy of a letter written by the New Hampshire Insurance Department Rehabilitator supporting the stay of actions against the insureds The Home. See Wolden Declaration, Ex. C (letter dated March 12, 2003). The Washington Superior Court granted the stay on April 10, 2003. The Gardner Class's motion to modify in this court followed.

II. DISCUSSION

The Gardner Class argues:

The broad stay provision of the Rehabilitation Order exceeds the statutory authority granted to the courts regarding the scope of such stays. The statute, RSA 402-C:18, I, authorizes stays only of lawsuits against "an insurer," not those against "any insured" of an insurer. Similarly, in the event a liquidation order is sought and issued against The Home, the relevant statutory authority, RSA 402-C:28, would authorize an abatement of lawsuits solely against the insurer, not those against any insured."

Gardner Class's Mot. at 3, ¶5 (emphasis in original).

RSA chapter 402-C governs the rehabilitation and liquidation of insurers.

The purpose of [RSA chapter 402-C] is the protection of interests of insureds, creditors, and the public generally, with minimum interference with the normal prerogatives of proprietors, through:

. . . .

- (b) Improved methods for rehabilitating insurers, by enlisting the advice and management expertise of the insurance industry;
- (c) Enhanced efficiency and economy of liquidation, through clarification and specification of the law, to minimize legal uncertainty and litigation;
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- (e) Lessening the problems of interstate rehabilitation and liquidation by facilitating cooperation between states in the liquidation process, and by extension of the scope of personal jurisdiction over debtors of the insurer outside the state[.] . . .

RSA 402-C:1, IV. RSA chapter 402-C "shall be liberally construed to effect the purposes stated in [RSA 402-C:1, IV]." RSA 402-C:1, III. To that end, RSA 402-C:5 grants the Court the power to grant "restraining orders, temporary and permanent injunctions, and other orders as are deemed necessary and proper to prevent", among other things, "[w]aste of the insurer's assets", "[t]he obtaining of preferences, judgments, attachments, garnishments or liens against the insurer or its assets" and "any other threatened or contemplated action that might lessen the value of the insurer's assets or prejudice the rights of policyholders" RSA 402-C:5, I(d), (g) and (k).

RSA 402-C:18, I, provides:

On request of the rehabilitator, any court in this state before which any action or proceeding by or against an insurer is pending when a rehabilitation order against the insurer is entered shall stay the action or proceeding for such time as is necessary for the rehabilitator to obtain proper representation and prepare for further proceedings. . . .

(emphasis added). RSA 402-C:28, I provides in pertinent part:

Upon issuance of any order appointing the commissioner liquidator of a domestic insurer or of an alien insurer domiciled in this state, all actions and all proceedings against the insurer whether in this state or elsewhere shall be abated and the liquidator shall not intervene in them, except as provided in this section.

(emphasis added).

The Gardner Class argues that since RSA 402-C:18, I, and RSA 402-C:28 do not use the term "insured" but only "insurer", the Court does not have the authority to stay and abate actions against The Home's insureds. This is too narrow a reading of the statute. It does not follow that because RSA 402-C:18, I, and RSA 402-C:28 do not use the term "insured", the Court does not have authority to impose the statutory provisions of RSA chapter 402-C to an insurer of a party in a civil suit.

When interpreting a statute, "[a]ll of the sections of a statute must be construed together, and not viewed separately in isolation." Appeal of Inter-Lakes Sch. Bd., 147 N.H. 28, 32 (2001) (citation omitted). Reading the sections of RSA chapter 402-C together, the Court has the authority to consider the interests of The Home's insureds and to make necessary orders to prevent actions that threaten the rights of insureds. RSA 302-C:1, IV and RSA 302-C:5, I. Moreover, when interpreting a statute, the New Hampshire Supreme Court "will not place a literal interpretation on a phrase when doing so removes it from the context as a whole." State v. Johnson, 134 N.H. 570, 576 (1991) (quoted with approval Appeal of Inter-Lake Sch. Bd., 147 N.H. at 32). The Gardner Class's interpretation of RSA 402-C:18, I, removes it from the context of


a statute the Legislature intended to be liberally construed to protect insureds. If the Court were to adopt the Gardner Class's interpretation, it would render the portions of RSA 402-C:5 meaningless. Finally, as in most cases where a party to litigation is insured, the real party in interest is the insurer.

By staying actions against insureds, the Court is effectuating one of the explicit purposes of RSA chapter 402-C, which is to protect insureds who have paid premiums for liability and defense coverage from The Home. RSA 402-C:1, IV. Also, RSA 402-C:5 specifically permits a court to issue orders to protect against actions that might lessen policyholders' rights and to prevent wasting the insurer's assets. Because the Court disagrees with the Gardner Class's interpretation of RSA 402-C:18 and 28, the Court will not modify the Rehabilitation Order.

So Ordered.

Dated:

6/11/03


KATHLEEN A. MCGUIRE,
Presiding Justice