

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

2004 SEP 30 10 33 52

Docket No. 03-E-0106

In the Matter of the Liquidation of  
The Home Insurance Company

LIQUIDATOR'S REPLY TO OPPOSITIONS TO MOTION FOR  
SCHEDULING ORDER OR CONFERENCE TO ADDRESS REMAND  
ORDER

Roger A. Sevigny, Commissioner of Insurance for the State of New Hampshire, as Liquidator ("Liquidator") of The Home Insurance Company ("Home"), hereby replies to the oppositions of the ACE Companies and Benjamin Moore & Co. ("BMC") to the Liquidators' motion for a scheduling order or conference to address the New Hampshire Supreme Court's order of September 13, 2004 (the "Order"). In the Matter of the Liquidation of The Home Insurance Company, Case No. 2004-0319.

1. The procedure proposed by the Liquidator was contemplated by the Supreme Court in the Order and does not foreclose further action by this Court. The ACE Companies and BMC assert that the Supreme Court's concern for a "sufficient evidentiary record" (Order at 1) requires that there be a full evidentiary hearing. To the contrary, the Supreme Court expressly left the extent of the evidentiary record to the discretion of this Court. The Supreme Court stated that, "On remand, the trial court may resolve these issues through offers of proof, unless it determines that a full evidentiary hearing is necessary." Order at 2. The Liquidator's proposal for simultaneous briefing of the five issues and presentation of written offers of proof

will provide the Court with the legal and factual materials necessary to decide how to proceed. The proposal does not limit the Court but would permit an informed decision as to whether a full evidentiary hearing is necessary.

2. The ACE Companies and BMC overstate their role in asserting that each is a “party” with a “right” to discovery. The Supreme Court identified one of the issues on remand as “whether the intervenors have standing to contest the agreement.” Order at 2. The question of the role of the ACE Companies and BMC is thus open, and the Liquidator will fully brief the issue. However, it is appropriate to note now that the ACE Companies and BMC are not parties to the liquidation but are “interested persons.” An insurer liquidation proceeding is not an adversary action but a statutory in rem proceeding in which the Court supervises the Commissioner as Liquidator. RSA 402-C:21, I. See Rand v. Merrimack River Sav. Bank, 86 N.H. 351, 353-354 (1933) (court assumes custody of estate and bank commissioner appointed as receiver under statute is subject to judicial control). See also Ainsworth v. Old Sec. Life Ins. Co., 685 S.W.2d 583, 585-586 (Mo. App. 1985) (receivership is not an “action” to which intervention rule applies). The Liquidator’s motion for approval of the AFIA Agreement is directed to the Court in its supervisory capacity under RSA 402-C:25. Interested persons have no right to discovery but may only apply to the Court if they believe the discovery would aid the Court in excising its supervisory discretion.


Respectfully submitted,

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

By his attorneys,

KELLY A. AYOTTE  
ATTORNEY GENERAL

September 30, 2004



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

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

Certificate of Service

I hereby certify that a copy of the foregoing Reply to Oppositions to Motion for Scheduling Order or Conference to Address Remand Order was sent, this day, by first class mail, postage prepaid to all persons on the attached service list.



Suzanne M. Gorman

**SERVICE LIST**

Ronald L. Snow, Esq.  
Orr & Reno  
One Eagle Sq., PO Box 3550  
Concord, NH 03302-3550

Gary Lee, Esq.  
Lovells-16<sup>th</sup> Floor  
900 Third Avenue  
New York, NY 10022

Pieter Van Tol, Esq.  
Lovells  
900 Third Ave., 16<sup>th</sup> Floor  
New York, NY 10022

Eric D. Jones, Esq.  
Rachlin Downs Martin PLLC  
199 Main Street PO Box 190  
Burlington, VT 05402-0190

Gail M. Goering, Esq.  
Lovells – One IBM Plaza  
330 N. Wabash Ave., Suite 1900  
Chicago, IL 60611

Adam Goodman, Esq.  
Lovells – One IBM Plaza  
330 N. Wabash Ave., Suite 1900  
Chicago, IL 60611

Eric Haab, Esq.  
Lovells  
330 N. Wabash Ave., Suite 1900  
Chicago, IL 60611

Andre Bouffard, Esq.  
Rachlin Downs Martin PLLC  
199 Main Street PO Box 190  
Burlington, VT 05402-0190