

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 ON MOTION FOR STAY

Background:

On September 22, 2005, this Court issued an order granting the Liquidator's Motion for Approval of Agreement and Compromise with AFIA Cedents (the "Agreement"). The September 22 order was silent as to whether all or a part of that order was stayed pending the expected appeals. The parties filed no post-order pleadings regarding a stay prior to the timely filing of the Rule 7 Mandatory Appeal Notices on October 21, 2005. ACE Companies first raised the issue of a stay on November 1, 2005 when they requested that the Supreme Court waive the requirement set forth in Supreme Court Rule 7-a to first file a motion for stay in the Superior Court. That request was denied and the filings in this Court followed.

Both ACE Companies and Benjamin Moore & Company now seek a declaration that the September 22 order is stayed by operation of law. In the alternative, they request that the Court issue a discretionary stay for the purpose of maintaining the status quo pending appeal. ACE Companies and Benjamin Moore & Company seek a stay because after issuance of the September 22 order, and after the filing of the notices of appeal, the

Provisional Liquidator successfully petitioned the High Court in the United Kingdom for sanction of the scheme of arrangement contemplated by the Agreement. A sanction by the High Court is one of the conditions necessary for establishing an effective scheme of arrangement pursuant to the Agreement. The parties agree that if this Court grants a stay of the September 22 order the recent High Court sanction would be ineffective.

Discussion:

ACE Companies and BMC argue that the September 22 order is automatically stayed by operation of Superior Court Rule 74, which provides in pertinent part that “final judgment shall be entered...unless the Court has otherwise ordered, or unless a notice of appeal has then been filed with the Supreme Court pursuant to its Rule 7.”

In weighing whether the September 22 order is stayed or should be stayed, the Court considers the regulatory context within which the matters under appeal rest, and the lengthy course of regulatory and judicial scrutiny the Agreement has received to date. Further, the Court recognizes the general rule that the Supreme Court has exclusive power and jurisdiction over subject matters on appeal and that any such matters must be properly preserved. That being said, an appeal does not necessarily strip the lower court of all power over a proceeding and, while giving appropriate regard for the general rule, this Court may issue orders collateral to the matters on appeal. *In re Nyhan*, 151 N.H. 739, 745 (2005).

Within that context, the Court gives practical consideration to the effect of the recent actions of the Liquidator and the Joint Provisional Liquidators in conjunction with their Petition to the High Court. While mindful of the legal and equitable bases upon which ACE Companies and Benjamin Moore & Company object to the Agreement, the

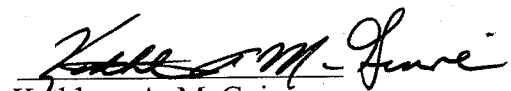
Court has been advised that the prospect of any distribution is many months, and possibly more than a few years, in the future. Additionally, the Court heard nothing contrary to the Liquidator's assertion that whether the High Court's recent sanction of the scheme of arrangement stands or not, the parties will be moving forward to adjust AFIA cedent claims, with ACE Companies actively participating under the claims protocol previously approved by this Court.

Conclusion:

Because of the administrative and regulatory context within which this Court exercises its supervisory role of this case, the Court declines to stay its order of September 22 under Rule 74. Further, because matters on appeal are fully preserved without it, the Court declines to issue the broad discretionary stay that ACE Companies and Benjamin Moore & Company request. Instead, the Court issues a narrow order directed only at the distribution mechanism contemplated by the Agreement. Therefore, pending resolution of matters on appeal, the Liquidator is restrained from moving forward with any distributions under the scheme of arrangement contemplated by the Agreement. Otherwise, the Court's order of September 22, 2005 remains in effect pending appeal.

SO ORDERED:

Dated: 12/9/05


Kathleen A. McGuire
Presiding Justice