

THE STATE OF NEW HAMPSHIRE

MERRIMACK SS.

SUPERIOR COURT

Docket No. 03-E-0106

**ORDER ON ACE COMPANIES' MOTION FOR
RECONSIDERATION OF ORDER ON REMAND**

Before the Court for consideration is ACE Companies' Motion for Reconsideration of Order on Remand. Benjamin Moore & Co. joins in the ACE Companies' pending Motion.

Background:

On April 8, 2004 this Court issued an order granting the Liquidator's Motion for Approval of Agreement and Compromise with AFIA Cedents. On appeal, the New Hampshire Supreme Court vacated the April 8, 2004 order, remanding the case for further specific rulings upon issues in dispute. In response this Court issued an Order on Remand on October 9, 2005.

With the purpose of seeking an early resolution of the issue of whether the contemplated payments to AFIA Cedents are properly classified as administrative expenses under RSA 402-C:44, I, ACE Companies and Benjamin Moore & Co. then filed an interlocutory appeal focused specifically upon that issue. Contemporaneous with the filing of the interlocutory appeal, the parties commenced discovery to prepare for an evidentiary hearing on whether the contemplated agreement was necessary, fair and reasonable. The Supreme Court declined to accept the interlocutory appeal on December 27, 2004.

Discussion:

The ACE Companies' Motion for Reconsideration of Order on Remand was filed on February 28, 2004. The parties briefly addressed the substance of the pending motion at a March 3, 2005 scheduling conference, at which time ACE Companies requested

additional opportunity to file supplemental pleadings to address matters raised. Since that time, various pleadings, exhibits and affidavits have been filed by ACE Companies and the Liquidator.

In their Motion for Reconsideration of Order on Remand, ACE Companies take issue with certain matters which transpired during the pendency of the interlocutory appeal, and after the Supreme Court's declination of it. In the filed pleadings, various exhibits and affidavits, ACE Companies point to two matters: 1) a "technical amendment" bill filed at the behest of the New Hampshire Insurance Department, a section of which was directed at amending NH RSA 402-C:44; and 2) regulatory discussions pertinent to the priority of claimants and distributions within the Insurers Receivership Model Act Revision Working Group of the National Association of Insurance Commissioners. In both these settings, proposals were advanced to facilitate, for certain purposes, payments to lower priority claimants in liquidations to enhance payments to higher priority claimants.

ACE Companies argue that these initiatives undermine assertions made and positions taken by the Liquidator in various court proceedings in support of the pending agreement and compromise with AFIA Cedents; and further, that these actions require the Court to reconsider its position that payments to the AFIA Cedents are permissible under RSA 402-C:44, I. The Liquidator counters that there is nothing disingenuous about either of the questioned initiatives as they may relate to the Liquidator's posture on the AFIA agreement, adding that the legislative amendment was proposed to clarify existing law for purposes of eliminating future legal debate, and that the discussions in the working group at the NAIC were appropriate to the on-going function of the NAIC to update, as necessary, model laws/rules as circumstances and regulatory developments may require.

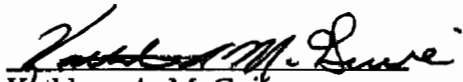
Conclusion:

Contrary to ACE Companies assertions as to the relevancy of those initiatives, the Court finds neither to have any implication for the October 8, 2004 Order on Remand, which relied upon RSA 402-C: 1, III and IV; RSA 402-C:25, IV, VI and XXII and RSA

402-C: 44, I, existing statutory provisions in NH RSA Chapter 402-C. Accordingly, ACE Companies' Motion for Reconsideration of Order on Remand is DENIED.

SO ORDERED:

DATED: 4/25/05


Kathleen A. McGuire
Associate Justice