

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

Docket No. 217-2003-EQ-00106

In the Matter of the Liquidation of
The Home Insurance Company

ZURICH INSURANCE PLC, GERMAN BRANCH AND
WÜRTTEMBERGISCHE VERSICHERUNG AG'S MOTION TO STAY ORDERS GRANTING
LIQUIDATOR'S MOTION FOR APPROVAL OF CLAIM AMENDMENT DEADLINE
WITH REQUEST FOR HEARING

MERRIMACK SUPERIOR
2021 FEB 11 P 3:24

Zurich Insurance plc, German Branch and Württembergische Versicherung AG (hereinafter, "Objecting Creditors"), by and through their attorneys, McLane Middleton, Professional Association and Freeborn & Peters, LLP, move this Court to immediately stay the Court's two orders granting the Liquidator's Motion for Approval of Claim Amendment Deadline (the "Orders") dated January 28, 2021. As grounds for this motion, the Objecting Creditors state as follows:

1. The Objecting Creditors are filing a motion to reconsider the Orders contemporaneously with this motion. A stay of the Orders is necessary to provide sufficient time for reconsideration of the Orders to proceed in an orderly manner without, in effect, running out the clock on the claims amendment time period established in the Orders. Further, in the event this Court denies the Objecting Creditors' motion for reconsideration, the Objecting Creditors are likely to appeal the decision to the New Hampshire Supreme Court. Thus, a stay of the Orders is necessary to provide sufficient time both for reconsideration before this Court and appeal, whether direct or interlocutory, to the New Hampshire Supreme Court.¹

¹ In their separate motion for reconsideration, the Objecting Creditors requested that this Court clarify whether the Orders, as reconsidered, operate as a final decision on the merits for purposes of appeal to the New Hampshire Supreme Court.

2. By Clerk's notice dated February 1, 2021, this Court issued two orders granting the Liquidator's Motion for Approval of Claim Amendment Deadline and issuing the Liquidator's Proposed Order Approving Claim Amendment Deadline with certain adjustments. The Orders establish a Claims Amendment Deadline, by which time the Objecting Creditors must submit any and all amendments to proofs of claim in the Home Liquidation, to occur 150 days from the date of issuance of the Orders. Such date currently falls on July 1, 2021.

3. Contemporaneously with this motion for a stay, the Objecting Creditors have filed a companion motion for reconsideration in which the Objecting Creditors ask this Court to reconsider important issues concerning mistakes of both fact and law, and matters overlooked by this Court, contained in the Orders. Pursuant to Rule 12(e)(3) of the Rules of the Superior Court of the State of New Hampshire, the filing of a motion for reconsideration, by itself, does not stay the Court's Orders. Thus, the Objecting Creditors request that the Court immediately stay its Orders during the pendency of reconsideration and for a further period of time as necessary to allow for appeal, whether a direct appeal or interlocutory appeal, to the New Hampshire Supreme Court.

4. In addition to the Superior Court rules, New Hampshire Supreme Court Rule 7-A(1) provides that "[a] motion to stay an order or judgment of a lower tribunal shall not be filed in this court unless the movant has first unsuccessfully sought similar relief from the lower tribunal." Thus, in anticipation of a potential appeal to the New Hampshire Supreme Court, the Objecting Creditors file this motion to comply with Rule 7-A(1) and to preserve their right to request a stay before the New Hampshire Supreme Court, if necessary.

5. An immediate stay of the Court's Orders is both necessary and prudent. Given the short period of time (150 days) for the Objecting Creditors to submit any and all claim

amendments to the Liquidator, it will be unfairly prejudicial to the Objecting Creditors to allow the claim amendment time period to run while the Court considers issues on reconsideration that bear directly on the Court's approval of the claim amendment deadline itself.

6. Further, as indicated above, unless the Court reverses its ruling as set forth in the Objecting Creditors' motion for reconsideration, it is likely the Objecting Creditors will appeal the Court's decisions to the New Hampshire Supreme Court. Whether such appeal is filed as a direct appeal or an interlocutory appeal, the time required to resolve any such appeal will render any issues raised on appeal vulnerable to a mootness argument if the claim amendment period is not stayed.

7. In contrast to the prejudicial effect not granting a stay will have on the rights of the Objecting Creditors, granting the requested stay will not have any material impact on the Liquidator or other parties to this case. To the contrary, as the Objecting Creditors argued in their Objection to Liquidator's Motion to Approve Claim Amendment Deadline, and again argue in the separate motion for reconsideration, keeping The Home Estate open during the pendency of reconsideration and appeal will serve to benefit Class II creditors and the entire Home Estate. *See* Objecting Creditors November 18, 2019 Objection at pp. 25-26 and Motion for Reconsideration at pp. 6-7.

8. In conclusion, the current procedural posture of the case, as well as considerations of judicial economy and burdens on the parties, warrant issuing a stay while this Court evaluates the Objecting Creditors' motion for reconsideration and, if necessary, while the New Hampshire Supreme Court evaluates the issues relevant to the Objecting Creditors' claims on appeal.

9. Pursuant to Super. Ct. R. 11(c), the Objecting Creditors sought concurrence from counsel for the Liquidator. The Liquidator has not provided his assent to the relief sought in this motion.

WHEREFORE, the Objecting Creditors respectfully request that this Court:

- A. Stay the Court's Orders granting Liquidator's Motion for Approval of Claim Amendment Deadline immediately until such time to allow for resolution of the pending motion for reconsideration and any appeal to the New Hampshire Supreme Court;
- B. Schedule a hearing on Objecting Creditors' Motion to Stay; and
- C. Grant such other and further other relief that the Court deems just and proper.

Respectfully submitted,

ZURICH INSURANCE PLC GERMAN
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By their Attorneys,

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Dated: February 11, 2021

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Certificate of Service

I hereby certify that a copy of the foregoing Zurich Insurance plc German Branch's and Württembergische Versicherung AG's Motion to Stay Orders Granting the Liquidator's Motion for Approval of Claim Amendment Deadline was sent this 11th day of February 2021 by first class mail, postage prepaid to all persons on the attached service list, and via email to the Parties below marked with an asterisk.



Mark C. Rouvalis

THE STATE OF NEW HAMPSHIRE

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