

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In the Matter of the Liquidation of
The Home Insurance Company

Docket No. 2004-_____

2004 NOV -1 P 3:56
NEW HAMPSHIRE SUPREME COURT
CLERK OF COURT
1000 STATE STREET
CONCORD, NH 03301

**LIQUIDATOR'S MOTION FOR REMAND TO PERMIT
CONSIDERATION OF MOTION FOR RECONSIDERATION**

Roger A. Sevigny, Commissioner of Insurance for the State of New Hampshire, as Liquidator ("Liquidator") of The Home Insurance Company ("Home"), moves for an order remanding this matter to the Superior Court to permit that Court to consider the Liquidator's motion for reconsideration of the order approving the interlocutory appeal statement. In support of this Motion, Liquidator states as follows:

1. On October 28, 2004 the ACE Companies filed in this Court a copy of a Motion to Transfer Question of Law for Interlocutory Appeal, which had been granted by the Merrimack County Superior Court, and an Interlocutory Appeal Statement. Because the Liquidator was not heard on the ACE Companies' Motion and proposed Interlocutory Appeal Statement before it was approved, the Liquidator requests that the Supreme Court remand the matter to the Superior Court to afford an opportunity for the Superior Court to consider the Liquidator's objections to and comments on the Interlocutory Appeal Statement. The Liquidator believes that the Interlocutory Appeal Statement proposed by the ACE Companies is inappropriate because (a) it does not provide sufficient background and mischaracterizes aspects of the Order on Remand, (b) it both omits important facts necessary to an understanding of the questions of law and includes irrelevant and disputed factual points, and (c) the record incorporated in the statement by reference omits the appendix

submitted by the Liquidator and seeks to include an incomplete transcript of the argument before the Supreme Court.

2. This requested interlocutory appeal arises from an Order on Remand entered by the Superior Court on October 8, 2004, in response to the Supreme Court's Order of September 13, 2004 in Docket No. 2004-0319 remanding the case to the Superior Court. The Order on Remand clarified that in its previous rulings it had found that the payments to the AFIA Cedents are administrative expenses, and it authorized the ACE Companies and Benjamin Moore & Co. to appeal the Court's finding that payments to AFIA Cedents are administrative expenses. Order on Remand at 10, 14.

3. The ACE Companies filed a Motion to Transfer Question of Law for Interlocutory Appeal ("Motion") on October 21, 2004. The Motion included a proposed Interlocutory Appeal Statement ("ACE Interlocutory Appeal Statement").

4. The Motion stated that the concurrence of the Liquidator to the Motion was not sought. Motion ¶ 3. The Motion was served by mail. Pursuant to Superior Court Rules 12 and 58, the Liquidator had until November 1, 2004 to respond to the Motion.

5. While the Liquidator agreed that the question of law identified in the Order on Remand should be transferred for interlocutory appeal, the Liquidator was preparing a partial objection to the Motion, including an alternative Interlocutory Appeal Statement.

6. On October 27, 2004, before the period for response the Motion had run, the Superior issued two orders concerning the Motion, the first granting the Motion and the second approving the ACE Interlocutory Appeal Statement. The Liquidator first learned of these orders from the Liquidation Clerk's website on October 28, 2004. The Clerk's Notice

of these orders was served by mail and received by counsel for the Liquidator on October 29, 2004.

7. On October 29, 2004, less than 24 hours after learning of these orders, and prior to receiving the Clerk's Notice, the Liquidator filed a Motion for Reconsideration of Order Approving Interlocutory Appeal Statement ("Motion for Reconsideration") with the Superior Court and advised counsel for the ACE Companies of the motion. The Motion for Reconsideration presents the issues noted in paragraph 1 above and includes a proposed alternative Interlocutory Appeal Statement. A copy of the Motion for Reconsideration is attached as Exhibit A.

8. Later on October 29, 2004, the Liquidator received a copy of the documents which the ACE Companies had already filed with the Supreme Court on October 28, 2004. At no time prior to the service by mail did the ACE Companies inform the Liquidator that the ACE Companies had obtained a signed Interlocutory Appeal Statement from the Superior Court or that they had filed it in the Supreme Court.

9. The Liquidator has acted as expeditiously as reasonably possible in attempting to be heard in this matter.

10. Because the Liquidator's objections to and comments on the Interlocutory Appeal Statement as presented in the Motion for Reconsideration have not been heard by the Superior Court, it would be in the interests of justice for the Supreme Court to remand the matter to the Superior Court so the Superior Court would have an opportunity to take them into account.

WHEREFORE, the Liquidator respectfully requests that this Court:

A. Grant the Liquidator's Motion for Remand to Permit Consideration of Motion for Reconsideration; and

B. Grant such other and further relief as justice may require.

Respectfully submitted,

ROGER A. SEVIGNY, COMMISSIONER OF
THE STATE OF NEW HAMPSHIRE
INSURANCE DEPARTMENT, IN HIS
OFFICIAL CAPACITY AS INSURANCE
COMMISSIONER AND LIQUIDATOR OF
THE HOME INSURANCE COMPANY
By his attorneys,

KELLY A. AYOTTE
ATTORNEY GENERAL



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

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

Date: November 1, 2004

Certificate of Service

I hereby certify that a copy of the foregoing Liquidator's Motion for Remand has been sent this day, by first class mail, postage prepaid, and electronic delivery to all persons on the attached service list.



Suzanne M. Gorman