

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In the Matter of the Liquidation of
The Home Insurance Company

Docket No. 2005-0740

**MOTION TO WAIVE FILING OF MOTION TO STAY
IN THE SUPERIOR COURT**

Defendants, Century Indemnity Company, ACE Property and Casualty Insurance Company, Pacific Employers Insurance Company and ACE American Reinsurance Company (collectively, “the ACE Companies”) by its attorneys, Orr & Reno P.A., move this Court, pursuant to Supreme Court Rule 7-A, to waive the requirement set forth in Supreme Court Rule 7-A to first file a motion to stay in the Superior Court under the exigent circumstances presented more fully in the Expedited Motion to Stay. In support of this Motion, the ACE Companies respectfully state:

(1) ACE Companies and Benjamin Moore & Co. have appealed from the September 22, 2005 decision of the Merrimack County Superior Court (McGuire, J.) approving the Liquidator’s Motion For Approval of an Agreement and Compromise with AFIA Cedents following a five-day final hearing (“the September 22 Order”).

(2) As more fully set forth in the Expedited Motion to Stay filed herewith, ACE Companies’ U.K. counsel has learned that the Joint Provisional Liquidators (“JPLs”) of the Home Insurance Company intend to seek approval in England before the High Court of Justice of the Scheme of Arrangement set out in the Proposed Agreement, that is the subject of this appeal, claiming that the trial court’s approval of that Agreement

is now fully enforceable. A hearing date of November 3, 2005 has been set before the High Court.

(3) As set forth in the Expedited Motion to Stay, the September 22 Order is not fully enforceable because ACE Companies and Benjamin Moore have taken timely appeals from it. The ACE Companies are seeking confirmation of the legal effect of the appeal to oppose the sanction (approval) of the Scheme before the High Court in England because the Liquidator has refused to instruct his representatives, the JPLs, to withdraw the petition for Scheme approval. In the alternative, the ACE Companies are seeking a stay under Rule 7-A on the ground that the merits of the appeal outweigh any possible prejudice that an adjournment of the Scheme approval would cause.

(4) The ACE Companies have also shown in the Expedited Motion to Stay that there is no reason to seek Scheme sanction now, and that the Liquidator is improperly attempting to use Scheme sanction as evidence in this appeal. In fact, the JPL's UK counsel has confirmed that they would bring any Scheme approval to this Court's attention.

(5) The ACE Companies are requesting a waiver of the Rule 7-A requirements because the concern is that the Home will try to use the Scheme approval in this Court. In addition, there is not sufficient time to seek a stay in the Superior Court, and then if necessary, appeal an adverse ruling to this Court given that the sanction hearing is scheduled for November 3, 2005.

WHEREFORE, the ACE Companies respectfully request this Court:

- A. To waive the filing of a Motion to Stay with the Merrimack County Superior Court; and

- B. To grant the Expedited Motion to Stay ; and
- C. To grant such other and further relief as this Court deems just and proper.

Respectfully submitted,

ACE Companies

By Their Attorneys

ORR & RENO, P.A.
One Eagle Square
P.O. Box 3550
Concord, NH 03302-3550
(603) 224-2381

and

LOVELLS
Gary S. Lee
Pieter Van Tol
900 Third Avenue
New York, New York 10022
(212) 909-0600

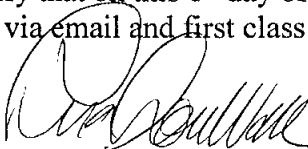
Dated: November 1, 2005

By: 

Lisa Snow Wade

CERTIFICATE OF SERVICE

I, Lisa Snow Wade, Esq. hereby certify that on this 1st day of November, 2005, a copy of the within document was forwarded via email and first class mail to counsel of record.



Lisa Snow Wade