

**THE STATE OF NEW HAMPSHIRE  
SUPREME COURT**

**In the Matter of the Liquidation of  
The Home Insurance Company**

**No. 2005-0740**

**LIQUIDATOR'S OBJECTION TO ACE COMPANIES' MOTION  
TO WAIVE FILING OF MOTION TO STAY IN THE SUPERIOR COURT**

The appellee Roger A. Sevigny, Insurance Commissioner of the State of New Hampshire, as Liquidator ("Liquidator") of The Home Insurance Company (Home"), hereby objects to the Motion to Waive Filing of Motion to Stay in the Superior Court filed by appellants Century Indemnity Company, ACE Property and Casualty Insurance Company, Pacific Employers Insurance Company, and ACE American Reinsurance Company (the "ACE Companies"). As reasons therefor, the Liquidator states:

1. Supreme Court Rule 7-A provides that a motion to stay an order of the Superior Court "shall not be filed in this court unless the movant has successfully sought similar relief from the lower tribunal," subject to waiver by this Court "in extraordinary circumstances."

There are no "extraordinary circumstances" here.

2. The claimed need for haste is self-inflicted. The ACE Companies' ask that this Court waive the initial application for a stay to the Superior Court required by Rule 7-A because of the short time before the scheduled November 3, 2005 hearing in the English Court.

However, as described more fully in the Liquidator's Opposition to ACE Companies' Motion to Stay Order Pending Mandatory Appeal ("Liquidator's Opposition"), the ACE Companies have been aware of the Liquidator's and Joint Provisional Liquidators' intent to seek sanction of the Scheme in the English Court since at least October 4, 2005. Indeed, they were notified of the date of the sanction hearing and provided with drafts of the Joint Provisional Liquidators'

proposed filings on October 26, 2005. Nonetheless, it was only late on October 31, 2005 that the ACE Companies first asserted that Superior Court Rule 74 applied. The short time frame for decision before the hearing in England could have been avoided if the ACE Companies had proceeded more promptly.

3. The Superior Court should have an opportunity to consider the ACE Companies' new argument. As set forth in the Liquidator's Opposition, the ACE Companies' last-minute request to stay the September 22, 2005 Order ("Order") approving the agreement with AFIA Cedents contends in part that the Order is automatically stayed under Superior Court Rule 74. As discussed in the Liquidator's Opposition, that argument has no merit. Furthermore, that argument was not raised in the ACE Companies' motions to stay the April 29, 2004 approval order that was the subject of an earlier appeal (No. 2004-0319). In that case, this Court denied the ACE Companies' motion to waive the filing of motion to stay in the Superior Court, Order (No. 2004-0319, May 11, 2004) (Exhibit 1), and both the Superior Court and this Court denied the ACE Companies' motions to stay. See Order Relative to Stay of April 29, 2004 Order (No. 03-E-0106, June 1, 2004) (Exhibit 2); Order (No, 2004-0319, June 11, 2004) (Exhibit 3).

4. Given that the ACE Companies' past motions seeking to stay the earlier approval order did not contend that the order was automatically stayed, the Liquidator (and likely the Superior Court) reasonably expected that the Order was in effect unless stayed on motion. There was thus no reason to address the effectiveness of the Order in the Order itself. Even if the ACE Companies' new argument had merit, the Superior Court would likely determine that the Order should be in effect for the reasons stated in its earlier Order Relative to Stay of April 29, 2004 Order. The Superior Court should be given an opportunity to address the issue. See Rollins v.

Rollins, 122 N.H. 6, 9 (1982) (judge ordered that final decree was to be in effect pending appeal).

WHEREFORE, the ACE Companies' motion to waive filing of motion to stay in the Superior Court should be denied.

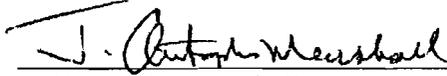
Respectfully submitted,

ROGER A. SEVIGNY, COMMISSIONER OF  
INSURANCE OF THE STATE OF NEW HAMPSHIRE  
SOLELY AS LIQUIDATOR OF THE HOME  
INSURANCE COMPANY AND US INTERNATIONAL  
REINSURANCE COMPANY,

By his attorneys,

KELLY A. AYOTTE  
ATTORNEY GENERAL

*November 2, 2005*

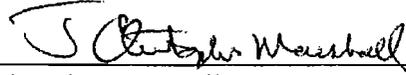


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**Certificate of Service**

I hereby certify that a copy of the foregoing Liquidator's Objection to the ACE Companies' Motion to Waive Filing of Motion to Stay in Superior Court was sent, this 2d day of November, 2005, by email to counsel for the ACE Companies and by first class mail, postage prepaid to all persons on the attached service list.



---

J. Christopher Marshall

**THE STATE OF NEW HAMPSHIRE  
SUPREME COURT**

**In the Matter of the Liquidation of  
The Home Insurance Company**

**No. 2005-0740**

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**THE STATE OF NEW HAMPSHIRE**  
**SUPREME COURT**



**In Case No. 2004-0319, In the Matter of the Liquidation of the Home Insurance Company, the court on May 11, 2004, issued the following order:**

Motion to waive filing of motion to stay in the superior court is denied. To the extent necessary, the case is remanded to the superior court for the limited purpose of ruling upon any motion to stay that may be filed by defendants Century Indemnity Company, ACE Property and Casualty Insurance Company, Pacific Employers Insurance Company and ACE American Reinsurance Company.

This order is entered by a single justice (Duggan, J.). See Rule 21(7).

**Eileen Fox,**  
**Clerk**

Distribution:  
Merrimack County Superior Court 03-E-0106  
Honorable Kathleen McGuire  
Andrew D. Bouffard, Esquire  
Eric D. Jones, Esquire  
Peter C. L. Roth, Esquire  
J. David Leslie, Esquire  
Ronald Snow, Esquire  
Mr. Gary Lee  
File

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 RELATIVE TO STAY OF APRIL 29, 2004 ORDER

The ACE Companies seek a stay of this Court's Order of April 29, 2004 which granted the Liquidator's Motion for Approval of Agreement and Compromise of AFIA Cedents.

In initial response to the Order of April 29, 2004, the ACE Companies filed a Motion to Transfer Question of Law for Interlocutory Appeal. Subsequently, pursuant to Supreme Court Rule 7 (4), ACE Companies assumed active participation as parties in Supreme Court Case No. 2004-0139, a Rule 7 Notice of Mandatory Appeal filed by Benjamin Moore & Co., which seeks review of matters identical to those raised in the ACE Companies' Interlocutory Appeal Statement. Accordingly, the Motion to Transfer Question of Law for Interlocutory Appeal is moot and/or denied.

As parties to the Benjamin Moore & Co. Rule 7 Notice of Mandatory Appeal, the ACE Companies filed a Motion to Waive Filing of Motion to Stay in Superior Court with the Supreme Court. That motion was denied by the Supreme Court and the case was remanded for the limited purpose of ruling upon any motion to stay filed by ACE Companies. ACE Companies filed the pending Motion for Stay of Order Pending Mandatory Appeal Pursuant to Rule 7 on May 12, 2004. The Liquidator's Objection to ACE Companies' Motion for Stay was filed on May 25, 2004. The Court notes that ACE

Companies have filed a motion to expedite the Supreme Court's consideration of the matter on appeal.

The ACE Companies argue that a stay in this Court will protect them from irreparable injury because the Liquidator, absent a stay, will be free to move forward with proceedings in the UK to effect the agreement. The Liquidator challenges the ACE Companies' assertions that they will suffer irreparable harm absent a stay, noting that ACE Companies' obligations to the liquidation estate arise under contracts pre-dating the liquidation, and that the agreement at issue imposes no additional liabilities beyond the \$231 million already assumed by the ACE Companies.

In pleadings related to this matter, the Court has been urged by both the Liquidator and ACE Companies to refer to bankruptcy principles and case law in the absence of insurance liquidation/rehabilitation case law specifically on point. For purposes of determining what standards must be met by a movant seeking a stay pending appeal, the Court relies upon the standards outlined in In Re: Public Service Co. of New Hampshire, 116 B.R. 347 (NH 1990). Therefore, ACE Companies must demonstrate that absent a stay they will suffer irreparable harm and that harm to them will be greater than any harm imposed on the liquidation by a stay. The Court does not find that the ACE Companies have met their burden in demonstrating irreparable harm. Indeed, the Court fails to see any significant harm. On balance and to the contrary, the Court discerns significant potential for harm to the liquidation and to policyholder creditors should a stay be granted, as such a stay is likely to create uncertainty and unnecessary delay.

The ACE Companies have also argued that a stay will preserve the *status quo* pending appeal, avoiding the possibility that actions of the Liquidator to implement the scheme of arrangement will be rendered “unnecessary and wasteful” should the ACE Companies be successful on appeal. In that regard, the Court notes that an uncertainty relating to the outcome of the pending appeal is borne by the ACE Companies and the Liquidator alike. Prior to the agreement becoming operative, there are additional applications and regulatory approvals to be addressed within the context of the Provisional Liquidation in the United Kingdom, making it unlikely that the ACE Companies will be at actual risk for performance of their obligations in the near future. Moreover, actions that may be taken by the Liquidator or Ace Companies regarding the agreement in the context of the proceeding in the UK are matters that would be entirely within the control and discretion of each.

The ACE Companies Motion for Stay of Order Pending Mandatory Appeal to Rule 7 is DENIED.

SO ORDERED:

DATED: 6/1/04

  
Kathleen A. McGuire  
Associate Justice

**THE STATE OF NEW HAMPSHIRE**

**SUPREME COURT**

**In Case No. 2004-0319, In the Matter of the Liquidation of the Home Insurance Company, the court on June 11, 2004, issued the following order:**

Motion for stay of order pending mandatory appeal pursuant to Rule 7 is denied. Ruling upon the State's motion to dismiss is deferred; the parties may brief the issues raised in the motion and address them at oral argument.

The motion to expedite consideration of appeal and to suspend rules, to which the Ace Companies represent that appellant Benjamin Moore & Company assents, is granted in part.

Case is accepted. Appellant's brief must be filed on or before June 24, 2004. On or before June 16, 2004, appellant shall designate in a letter any exhibits and pleadings to be transferred from the trial court. Cf. Rule 13.

Appellee's brief or memorandum of law must be filed on or before July 7, 2004. On or before July 1, 2004, appellee shall designate in a letter any exhibits and pleadings to be transferred from the trial court. Cf. Rule 13.

No reply briefs shall be filed. Oral argument shall be held on July 15, 2004.

Upon the filing of all parties' exhibits and pleadings lists to be transferred, the supreme court shall issue an order directing the trial court to transfer the exhibits and pleadings designated.

**NOTE:** Your brief must not exceed 35 pages. See Rule 16(11). If you are not the appealing party and you choose to file a memorandum in lieu of a brief, it must not exceed 15 pages in length. If you include an appendix to your brief, see Rule 17, include only those portions of the record that you believe the court must consult while reviewing the brief.

**In Case No. 2004-0319, In the Matter of the Liquidation of  
the Home Insurance Company, the court on June 11, 2004,  
issued the following order:**

This order is entered by a single justice (Duggan, J.). See Rule 21(7).

**Eileen Fox,  
Clerk**

**Distribution:**

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