

**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'
EXPEDITED MOTION FOR STAY OF ORDER**

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 Expedited Motion for Stay of Order Pending Mandatory Appeal Pursuant to Rule 7 ("Motion") filed by appellants Century Indemnity Company, ACE Property and Casualty Insurance Company, Pacific Employers Insurance Company, and ACE American Reinsurance Company (the "ACE Companies") seeking to stay the September 22, 2005 Order ("Order") of the Merrimack County Superior Court. The ACE Companies' late request for a stay should be denied because their new argument under Superior Court Rule 74 (not raised under identical circumstances in their motion for a stay in No. 2004-0319) would misapply the rule. A stay should be denied under the applicable standards because the ACE Companies will not suffer any irreparable injury in the absence of a stay. Indeed, the ACE Companies will not suffer any harm at all because the Agreement approved by the Order does not increase their obligations, which arise under pre-existing contracts. Further, as a practical matter, it will take time for claims to be determined before the Liquidator can seek payment from the ACE Companies, and if they refuse there will be collection proceedings. A stay would thus only serve to further delay commencement of the steps necessary to collect the obligations of the ACE Companies to the detriment of Home's policyholders and other creditors. As additional reasons, the Liquidator states:

Background

1. In the Liquidator's Motion for Approval of Agreement and Compromise With AFIA Cedents, dated February 11, 2004, the Liquidator sought approval from the Superior Court in its supervisory capacity under RSA 402-C:25 of the Liquidator's endorsement of a compromise, reflected in the Agreement between the Joint Provisional Liquidators appointed in the English provisional liquidation proceeding for Home's United Kingdom Branch and members of the Informal Creditors Committee established in that proceeding. The Superior Court granted the Liquidator's motion on April 29, 2004. On appeal, this Court vacated and remanded for further proceedings. See Order entered September 13, 2004 (No. 2004-0319).

2. The Order. The Superior issued an Order on Remand on October 8, 2004 addressing several legal issues. After the ACE Companies application for interlocutory appeal was denied, see Order entered December 27, 2004 (No. 2004-0729), the Superior Court oversaw extensive discovery proceedings. The Superior Court then held a five day evidentiary hearing involving 11 witnesses and over 90 exhibits from July 25-29, 2005. The Superior Court issued the Order on September 22, 2005.

3. The Order granted the Liquidators' motion and approved the agreement with the AFIA Cedents. In the Order and the earlier Order on Remand, the Superior Court concluded that "the Liquidator has the authority under Chapter 402-C to endorse the proposed agreement and compromise," and it further determined that the expenses of the Agreement are "properly categorized as they are 'actual and necessary costs of preserving or recovering the assets of the insurer' under RSA 402-C:44, I. See Order at 2, 26. The Court conducted a detailed consideration of the evidence at the hearing in the Order, see Order 5-33. It found that "the Liquidator has met his burden of proving that a reasonable liquidator under the circumstances would have concluded that the agreement was necessary to preserve access to and marshal the

AFIA reinsurances.” Order at 30. After considering the benefit to the estate of the Agreement, the negotiating position of the AFIA Cedents and Liquidator, and the history of the negotiations, the Court further found that the Agreement is “fair and reasonable.” Order at 33.

4. With respect to the ACE Companies, the Court found that:

Broadly considered, the financial fortunes of ACE are best served if the Liquidator’s agreement is not upheld. In that case, ACE stands to reap a sizable windfall. If the agreement is upheld, however, ACE cannot argue that its liabilities as a substantial net debtor to the estate, are any greater than those reflected under the terms of the contracts governing the 1999 transaction with CIGNA.

Order at 31 (emphasis added). In other words, the ACE Companies’ obligations are the same with the Agreement as they would have been if Home had not been liquidated.

5. The Previous Motions for Stay. With one exception, the issues raised in the ACE Companies’ present motion are not new. In the previous appeal in this matter (No. 2004-0319), the ACE Companies filed a motion for stay with this Court on May 11, 2004, together with a motion for waiver of the requirement of Supreme Court Rule 7-A that stays be initially sought in the trial court. On that same day, the Supreme Court denied the motion for waiver and, to the extent necessary, remanded the matter to the Superior Court for consideration of a motion to stay in the event the ACE Companies chose to file one. Order (No. 2004-0319, May 11, 2004). The ACE Companies then filed a motion to stay with the Superior Court on May 12, 2004. After briefing, the Superior Court denied the motion for stay on June 1, 2004. See Order Relative to Stay of April 29, 2004 Order (attached as Exhibit 1).

6. In the order denying the ACE Companies’ request for stay, the Superior Court applied the standards outlined in In re: Public Service Co. of New Hampshire, 116 B.R. 347 (Bnkr. D. N.H. 1990), and concluded:

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.

Order Relative to Stay of April 29, 2004 Order at 2 (emphasis added).

7. The ACE Companies then renewed their motion for stay in this Court on June 9, 2004. The Court denied the motion for stay and granted, in part, the ACE Companies motion to expedite consideration of the appeal by order dated June 11, 2004 (No. 2004-0319).

THE MOTION TO STAY SHOULD BE DENIED.

8. The ACE Companies motion for stay should be denied for the same reasons that the Superior Court denied their request in a procedurally identical situation over a year ago. The ACE Companies have failed to demonstrate irreparable harm, while the delay that would result from a stay would cause unnecessary delay to the prejudice of the policyholders and other priority creditors of Home. In addition, the ACE Companies' motion is unreasonably late, and their new argument based on Superior Court Rule 74 is without merit.¹

A. The ACE Companies' Motion Is Untimely.

9. As an initial matter, the Liquidator notes that the ACE Companies premise their last-minute motion for a stay on the assertion that "counsel for the JPLs recently informed U.K. counsel for the ACE Companies that they would seek the High Court's approval of the Scheme based on the September 22 Order." Motion ¶ 12 (emphasis added). However, the ACE Companies have been well aware of the Liquidator's intent since at least October 4, 2005, and the timing of this motion suggests a desire to create confusion over the status of matters in New

¹ The ACE Companies also contend that the proceedings in the English Court are intended to obtain a decision to influence this Court. Motion ¶ 7. This is inaccurate. As counsel for the Joint Provisional Liquidators has informed counsel for the ACE Companies: "Whilst the NH Liquidator will obviously bring the outcome of the hearing of the JPLs' application for sanction of the Scheme to the attention of the NH Supreme Court, he shall not seek to rely on the High Court's decision as further evidencing the benefit to the Company of implementing the Scheme or as giving rise to an estoppel on that issue." Exhibit 2 at letter, page 2.

Hampshire at the English Court's November 3, 2005 hearing. The pertinent chronology is as follows:

- On September 29, 2005, the ACE Companies' counsel in London sent a letter to the Joint Provisional Liquidator's counsel stating that the ACE Companies intended to appeal from the Order and asking for "confirmation" that the sanction hearing for the Scheme "will not take place until the New Hampshire Supreme Court has given its ruling on [the ACE Companies'] appeal of the Superior Court's decisions." Exhibit 3 at 1. The letter also requested "at least five business days notice of the Scheme sanction hearing." *Id.*
- On October 4, 2005, the Joint Provisional Liquidators' counsel responded by email declining to confirm that the sanction hearing would not take place, agreeing to provide five business days' notice of the hearing, and stating that it was the Liquidator's and Joint Provisional Liquidators' position that "there is no legal impediment to them proceeding to seek the High Court's sanction of the Scheme." Exhibit 4 at letter, page 1.
- On October 26, 2005, the Joint Provisional Liquidators gave the ACE Companies email notice of the November 3, 2004 sanction hearing, together with drafts of the Joint Provisional Liquidators' proposed filings. Exhibit 5.
- On October 28, 2005, the ACE Companies' asked questions about the Joint Provisional Liquidators' application. Exhibit 6.
- On October 31, 2005, the Joint Provisional Liquidators responded to those questions. Exhibit 2.

10. The ACE Companies were aware of the Liquidator's intent to seek the sanction of the English Court for the Scheme at least by October 4, 2005, but none of their letters raised the Superior Court Rule 74 issue they now rely on.² They cannot reasonably contend that they are somehow surprised by the application to the English Court. If they believed that that application would be inconsistent with New Hampshire procedure, the ACE Companies had ample opportunity to assert their position and seek a stay in time to permit orderly consideration. They chose not to do so, and their motion should be denied.

² The ACE Companies assert that their counsel "approached" counsel for the Liquidator over the Superior Court Rule 74 issue raised in the Motion on October 31, 2005. Motion ¶ 14. That "approach" consisted of a voicemail left during the evening of October 31 and an email on the morning of November 1 to one of the Liquidator's counsel. That attorney was in transit to London on November 1, and only received these messages after arriving in London late in the afternoon of November 1, U.S. time. See Exhibit 7.

B. The Order Is Not “Automatically” Stayed.

11. In their motion, the ACE Companies assert for the first time that the Order approving the Agreement is not effective because, they contend, it is “automatically” stayed under Superior Court Rule 74. Motion ¶ 15. The ACE Companies made no mention of this argument in their papers seeking to stay the April 29, 2004 Order, and they did not refer to it in their letters concerning the sanction hearing over the last month. See Exhibits 3, 6. In any event, the new argument has no merit.

12. The plain language of Superior Court Rule 74 shows that it does not apply to an appeal from an order by the court supervising an insurer liquidation approving an action by the Liquidator. As specified in language not quoted by the ACE Companies (Motion ¶ 15), the rule concerns the entry of final judgment in “actions at law or in equity, in which a verdict or decree is entered, or in which a motion for nonsuit or directed verdict is granted, or in which a bill in equity is dismissed, or in which any motion is acted upon after verdict or decree.” Superior Court Rule 74. The rule contemplates a “verdict or decree” that resolves an entire action. There is no such “verdict or decree” here, and this matter does not present any of the situations described in the rule. The case and treatise cited by the ACE Companies do not suggest that Rule 74 has any bearing on orders addressing individual motions in receivership proceedings.³ Indeed, the Order does not involve property rights of the ACE Companies subject to attachment or execution. Furthermore, application of the rule as advanced by the ACE Companies would have made the Superior Court’s ruling on the ACE Companies’ motion to stay the earlier approval order in the Order Relative to Stay of April 29, 2004 (Exhibit 1) unnecessary.

³ Rollins v. Rollins, 122 N.H. 6, 10-11 (1982), concerned the effect of an appeal of a final divorce decree between the marital parties. The passage from 5 R. Wiebusch, New Hampshire Practice, Civil Practice & Procedure § 59.07 at 451, is also addressed to the typical plaintiff v. defendant case.

13. In these circumstances, the Court should not adopt a strained construction of Superior Court Rule 74 that is contrary to the Superior Court's prior ruling denying a stay, the practice in the liquidation proceeding and the ACE Companies' conduct in vigorously pursuing motions to stay the earlier approval order in both the Superior Court and this Court. Based on the prior proceedings, the Superior Court would have expected the September 22, 2005 Order to be effective unless stayed on motion by the ACE Companies.

C. The ACE Companies Fail To Show Irreparable Harm And Are Not Likely To Prevail On Appeal, While Delay Will Harm The Policyholders and Other Creditors Of Home.

14. A party seeking a stay pending appeal should be required to meet the criteria for the issuance of injunctive relief. See Acevedo-Garcia v. Vera-Monroig, 296 F.3d 13, 16-17 (1st Cir. 2002) (per curiam); Public Service of New Hampshire, 116 B.R. at 348. Accordingly, the ACE Companies should be required to show likelihood of success on the merits, irreparable harm without a stay and a balance of the equities in their favor. See Kukene v. Genualdo, 145 N.H. 1, 4 (2000) (to obtain a preliminary injunction, a party "must show that it would likely succeed on the merits"); Smith v. New Hampshire Bd. of Psychologists, 138 N.H. 548, 554 (1994) ("Absent an immediate danger of irreparable harm, an injunction will not issue."); Vigitron, Inc. v. Ferguson, 120 N.H. 626, 632 (1980) (in considering injunctive relief, "the court must balance all of the equities, including the relative hardship to the parties").⁴ The ACE Companies can demonstrate none of these elements. They do not have a likelihood of success on the merits. They fail to show the irreparable injury necessary to support an order preventing

⁴ This is consistent with Rautenberg v. Munnis, 107 N.H. 446 (1966), the case cited by the ACE Companies at Motion ¶ 20. The Court there addressed a motion to continue the appeal and remand to permit consideration of a motion for new trial. The Court denied the motion because "it cannot be determined that the probable merits of the plaintiffs' motion outweigh the delay and inconvenience to defendants by a continuance and remand." Id. at 448. The Court thus considered the likely merits of the plaintiffs' arguments and the balance of the equities.

implementation of the Agreement during the appeal. Finally, issuance of a stay would harm the liquidation and Home's policyholder creditors so the balance of harms weighs against a stay.

15. As the Superior Court has concluded, the Agreement is within the Liquidator's broad statutory authority and consistent with the priority statute because the payments contemplated by the Agreement are administrative expenses of collecting an asset. Order at 1-2, 26-27; Order on Remand at 6-10. The Agreement is necessary to enable the Liquidator to collect an asset (the ACE Companies' obligations) that would otherwise be unavailable for the benefit of policyholders. Order at 30, 34 (granting Liquidator's proposed finding of fact 110 and conclusions of law 4-5). It is also fair and reasonable. Order at 31-33, 34 (granting Liquidator's proposed finding of fact 111 and conclusion of law 8). The ACE Companies' motion is an attempt to cause further delay. They seek to do so without establishing that they will suffer any irreparable harm. The burden of proving that harm is particularly heavy here because – unlike the situation in most requests for injunctive relief – the Superior Court has already determined the merits of the issue adversely to the moving party. See Order at 26-35. For all the reasons set forth in the Order and Order on Remand, the ACE Companies are not likely to prevail on appeal.

16. The ACE Companies do not even contend that without a stay they will suffer “irreparable injury.” The reason for this is clear. As the Superior Court found:

The Agreement is fair and reasonable to ACE. ACE will be involved in the determination of the AFIA Cedents' claims as provided in the negotiated Claims Protocol. The obligations of ACE are not increased over what they would have been had Home remained solvent and not been placed in liquidation. ACE offered no evidence to show that the Agreement harmed it. ACE would receive a windfall, compared to its obligations pre-liquidation, if AFIA Cedents did not file and prosecute their claims beyond offset.

Order at 34 (granting the quoted Liquidator's proposed finding of fact 115). The absence of harm is further demonstrated by the ACE Companies' own assertion that “it is unlikely that there

will be any reinsurance recoveries to distribute to the U.K. AFIA Cedents before this Court decides this appeal.” Motion ¶ 6. Payments can only follow (a) determination of claims under the claim determination process—in which one of the ACE Companies (Century Indemnity Company) will participate under the Claims Protocol with the Liquidator, see Order at 9-10, and (b) collection of proceeds based on allowed claims. *Id.* at 11. These steps will take time – longer than the time required to resolve the appeal – and should not be delayed.

17. The ACE Companies suggest only that (a) proceedings for approval of the Scheme in the English courts could “result in wasted effort” if ACE were to prevail in the Supreme Court, and (b) a stay would not harm the Liquidator. Motion ¶¶ 24, 26. This seeks to reverse the burden of proof, which should rest on the unsuccessful party below seeking a stay. In any event, the sanction proceedings in the English Court do not support a stay because they should not be expensive unless the ACE Companies make them so. *See State v. Tallman*, 139 N.H. 223, 225 (1994) (“Self-created hardships hold little weight in a balancing of the equities.”). While the proceedings (a petition for the Court’s sanction of the Scheme and an application for the Global Liquidation Order) are not expected to be complex, the ACE Companies have stated that they intend to “pursue all available remedies” in England and on appeal so that “complex, protracted and costly litigation is assured,” ACE Memorandum of March 19, 2004 at 15. Their intention to oppose and delay the English proceedings only harms Home’s policyholder claimants, and it warrants starting those proceedings earlier, not later.

18. The Court should consider the harm that would flow from the proposed stay. *See Vigitron*, 120 N.H. at 632. As the Superior Court noted in its Order Relative to Stay of April 29, 2004 Order at 2, a stay is “likely to create uncertainty and unnecessary delay.” It would cause confusion among the AFIA Cedents over the filing of their claims in the liquidation as

contemplated by the Agreement and delay the commencement of steps necessary to collect the estate asset for the time required for the appeal. This would harm the policyholder creditors of Home, contrary to the purposes of the insurer liquidation statutes and the public interest. See Order at 27; Thompson v. New Hampshire Bd. of Medicine, 143 N.H. 107, 108 (1998) (noting Superior Court's evaluation of public interest in considering injunctive relief).

19. In sum, the ACE Companies' motion should be denied in light of the Court's thorough and detailed decision on the merits, the lack of harm to the ACE Companies and the clear harm to the Home estate resulting from delay.

WHEREFORE, the ACE Companies' motion for stay should be denied.

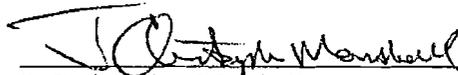
Respectfully submitted,

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

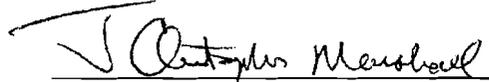


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Certificate of Service

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

A handwritten signature in cursive script that reads "J. Christopher Marshall". The signature is written in black ink and is positioned above a horizontal line.

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

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

Smith, Eric A. EAS

From: David.Steinberg@CliffordChance.com
Sent: Monday, October 31, 2005 5:35 PM
To: joe.bannister@lovells.com; philip.wilkinson@lovells.com; gary.lee@lovells.com
Cc: Jeanette.Best@CliffordChance.com; Leslie, J. David; Smith, Eric A. EAS; jonathan.rosen@homeinsco.com; pabinsconsult@aol.com; ghughes@uk.ey.com; mharrison1@uk.ey.com
Subject: The Home Insurance Company : JPLs' application for sanction of the scheme
Attachments: UK-#559524-v2-L_-_Lovells_31_10_2005.DOC; SFX169.pdf



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I attach our response to your 28 October letter. At Gary's request, I have attached a Word version of our response as well.

Kind regards,

David Steinberg
Partner - Insolvency
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IN REPLY PLEASE QUOTE
JXXB/245559/70-20247416/DJS

DATE
31 October 2005

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J Bannister, Esq.
P Wilkinson, Esq.

Dear Sirs

The Home Insurance Company (In liquidation and in provisional liquidation) (the "Company")
Century Indemnity Company and other ACE Group Companies ("ACE")

We write in response to your letter of 28 October 2005.

Before turning to the specific questions raised in your letter, we wish to make the following comments:

- (i) ACE misunderstands the reasons for our clients' seeking sanction of the Scheme at this time. It is not, as you have asserted, to seek a "litigation advantage". The joint provisional liquidators (the "JPLs") and the liquidator appointed by the New Hampshire Superior Court ("the NH Liquidator") believe such an application is appropriate for the reasons set out in paragraph 30 of the Third Witness Statement of Gareth Howard Hughes. They do not consider that any further delay in seeking sanction for the Scheme is appropriate. Neither do they accept that a sanction order of the English High Court would give rise to "confusion" on the part of the New Hampshire Supreme Court (the "NH Supreme Court").
- (ii) You note that the NH Supreme Court has, on two occasions, remitted the matter back to the NH Superior Court. These were in quite different circumstances and your description of them is in any event inaccurate. The order handed down by the NH

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Superior Court on 22 September 2005 ("the Approval Order") follows the NH Superior Court's thorough review of the issues and evidence.

- (iii) You assert that the ACE companies have a "legitimate interest" in seeking certain confirmations and information. Whilst we provide a response to your questions below, we would point out for the record that, for the most part, the ACE companies are substantial net debtors of the Company, the one exception being Pacific Employers Insurance Company who has submitted a proof of claim against the Company's estate in the amount of a mere U\$7,266.

We now turn to address your specific questions. Please note that, where a number of questions cover the same issue, such questions have been dealt with together.

1. *Please confirm that the JPLs are able and willing to give an irrevocable assurance and confirmation that, if the application were to be heard now and the Scheme were to be approved, such approval would not in any way be relied upon in any proceedings before the New Hampshire courts as evidencing the supposed benefit to the Company in implementing the Scheme or giving rise to some form of issue estoppel on that question.*

Whilst the NH Liquidator will obviously bring the outcome of the hearing of the JPLs' application for sanction of the Scheme to the attention of the NH Supreme Court, he shall not seek to rely on the High Court's decision as further evidencing the benefit to the Company of implementing the Scheme or as giving rise to an estoppel on that issue.

2. *Could you please confirm whether or not any discussions [between the JPLs and the Liquidator as to what would happen in the event that the appeal is successful] have taken place and if so what (if any) conclusions have been reached?*

The NH Liquidator is a public official appointed as liquidator by the NH Superior Court. If the NH Supreme Court were to issue a decision definitively holding that the Agreement is unlawful, the NH Liquidator's intention is that (after appropriate consultation) he would terminate the Scheme, as provided for therein.

3. *What do the JPLs presently anticipate will happen in or to the Scheme if it is sanctioned and the Approval Order is reversed?*

Please refer to the responses to question 2 above and questions 5 and 6 below.

4. *After a distribution has been made, is there any mechanism for it to be clawed back?*

There is no mechanism for any payments made under the Scheme to be clawed back. However, please see further below.

5. *Is it intended to implement the Scheme if sanctioned prior to the decision of the NH Supreme Court on the propriety of the proposed agreement and compromise under New Hampshire law being handed down? If not, what is the intention?*

The Approval Order handed down on 22 September 2005 is fully enforceable notwithstanding the pending appeals lodged by ACE and by Benjamin Moore & Co. In

all the circumstances, the JPLs intend to commence the implementation of the Scheme if it is sanctioned by the High Court on the current application. The JPLs and the NH Liquidator will be able to take account of the progress of the appeal at each point in the implementation of the Scheme, including at the stage of making payments to scheme creditors.

6. *What do the JPLs anticipate will have happened in the Scheme before the determination of the NH Supreme Court appeal, which we are told will have occurred no later than mid 2006?*

Please see 5 above.

The initial stages in the implementation of the Scheme will include the determination of the AFIA cedants' claims (a process in which ACE will take part in accordance with the claims protocol agreed between ACE and the NH Liquidator (and approved by the NH Superior Court)), as well as the collection of amounts due to the Company from ACE group companies.

We would point out that, as you are aware, there are no assurances that the NH Supreme Court will have delivered its decision on the appeal by mid 2006.

7. *We would like to be informed of the JPLs' current best estimate as to what part of those additional costs it is anticipated will have been incurred by mid 2006 if the Scheme is approved now? If those additional costs are incurred and the Scheme is ultimately abandoned, it is [ACE's] understanding that those costs will be irrecoverable. Can you please confirm that this accords with the JPLs' own understanding?*

The costs from today to mid 2006 will depend on a range of factors, including progress in the two initial stages referred to under 6 above. The costs of this process, once incurred, will remain incurred. The NH Liquidator and the JPLs will throughout have regard to the interests of creditors.

Yours faithfully,


Clifford Chance LLP

cc: Gary Lee - Lovells, New York

29 September 2005

Direct line 020 7296 2900
joe.bannister@lovells.com
Direct fax 020 7296 2001

Our ref F1JBB/1867410.01
Matter ref U0074/00018

By post and pdf

Philip Hertz Esq.
Clifford Chance LLP
10 Upper Bank Street
London
E14 5JJ

Dear Phillip

THE HOME INSURANCE COMPANY (IN LIQUIDATION AND PROVISIONAL LIQUIDATION): PROPOSED SCHEME OF ARRANGEMENT ("THE SCHEME")

I write further to the Order made by the State of New Hampshire Superior Court on 22 September 2005. My client intends to appeal that Order together with certain of the other matters remanded by the Supreme Court and decided by the trial court this year.

Would you please confirm to me that the Scheme sanction hearing for the Scheme approved by Home's Scheme Creditors in September 2004 will not take place until the New Hampshire Supreme Court has given its ruling on my clients' appeal of the Superior Court's decisions regarding the agreement and compromise with the AFIA Cedants. The Scheme was intended to implement that agreement and compromise.

Would you also, please, confirm that:

1. If the New Hampshire Supreme Court's ruling on my client's appeal has the effect of negating the agreement and compromise, the New Hampshire Liquidator will forthwith exercise the discretion given to him under clause 7.1.1(d) of the Scheme, to terminate the Scheme.
2. You will give our clients, through me, with a copy to my partner in New York, Gary Lee - email gary.lee@lovells.com - at least five business days notice of the Scheme sanction hearing.

Philip Hertz Esq.

- 2 -

29 September 2005

I await your response.

Kind regards

Yours sincerely



JB Bannister

cc Gary Lee Esq. - Lovells, New York
Philip Wilkinson Esq. - Lovells London
Tom Wamser Esq. - Century Indemnity

Smith, Eric A. EAS

From: David.Steinberg@CliffordChance.com
Sent: Tuesday, October 04, 2005 5:47 PM
To: joe.bannister@lovells.com
Cc: Jeanette.Best@CliffordChance.com
Subject: Home Insurance : ACE : Scheme sanction

Attachments: SFX101.pdf



SFX101.pdf (55 KB)

Joe,
I attach a pdf of our response to your letter of 29 September.
Would you kindly address all further communications on Home/ACE to me, rather than to Philip Hertz?

Kind regards,

David

David Steinberg
Partner - Insolvency
Clifford Chance LLP
10 Upper Bank Street
London, E14 5JJ
Direct Dial - 020 7006 1621
Mobile - 07785 700275
Fax - 020 7006 5555

<<SFX101.pdf>>

**C L I F F O R D
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YOUR REFERENCE

IN REPLY PLEASE QUOTE
DJS/H2164/00043

DATE
4 October 2005

DIRECT DIAL
020 7006 1621

J. Bannister Esq.
Lovells
Atlantic House
Holborn Viaduct
London EC1A 2FG

Dear Joe

Home Insurance Company - proposed scheme of arrangement ('the Scheme')

Thank you for your letter to Philip Hertz dated 29 September.

I note your client's intention to appeal against Judge McGuire's order dated 22 September. No doubt your US colleagues will be in contact with the Liquidator's US counsel on this appeal in due course.

I am not prepared to provide you with the confirmations which you seek in your letter, save that I am happy to confirm that we will endeavour to provide you (on a 'no obligation' basis) with the 5 business days notice of the sanction hearing which you request.

The position of the Liquidator and of the Provisional Liquidators is that, now that the New Hampshire Court has approved the agreement which underpins the Scheme proposal, there is no legal impediment to them proceeding to seek the High Court's sanction of the Scheme. Clause 7.1.1 (d) of the Scheme addresses the contingency of a New Hampshire Supreme Court decision which disapproves the agreement. It provides the Liquidator with the ability to terminate the Scheme in such an event. Discretion is provided because the nature of the New Hampshire Supreme Court's decision is unknown and can only be considered at that time.

I trust that this is helpful.

Yours sincerely

David Steinberg

CC: G. H. Hughes Esq.
Joint Provisional Liquidator, The Home Insurance Company

Smith, Eric A. EAS

From: Jeanette.Best@CliffordChance.com
Sent: Wednesday, October 26, 2005 10:54 AM
To: joe.bannister@lovells.com; gary.lee@lovells.com
Cc: robinknowles@southsquare.com; lucyfrazer@southsquare.com; Leslie, J. David; Smith, Eric A. EAS; ghughes@uk.ey.com; jonathan.rosen@homeinsco.com; MHarrison1@uk.ey.com; pabinsconsult@aol.com; sellis@uk.ey.com; David.Steinberg@CliffordChance.com
Subject: HOME INSURANCE COMPANY - NOTICE OF HEARING TO SANCTION THE SCHEME OF ARRANGEMENT

Attachments: Petition; 3rd Witness Statement of GHH; SFXCE2.pdf; Chairman's Report; Draft Order; 10th Witness Statement of GHH; Global Liquidation Order; Schedule to Global Liquidation Order



LONDON-2-#16754LONDON-2-#16730 SFXCE2.pdf (470 KB) LONDON-2-#16729UK-#45054-v4-HighUK-#526276-v7-WiLONDON-3-#12652
96-v7-Home_Peti... 02-v8-Witness_S... 99-v7-Chairman'... _Court_Docume... tness_statemen... 75-v3-Home_Glob...



LONDON-3-#11156
90-vRTF-Order_r...

Dear Sirs

The Home Insurance Company (in liquidation and in provisional liquidation) Hearing to sanction the Scheme of Arrangement dated 23 July 2004 (the "Scheme")

We refer to your letter of 29 September 2005 and our response of 4 October 2005. We write to confirm that there will a hearing of the application to sanction the Scheme on 3 November 2005 at the Royal Courts of Justice at a time to be confirmed. Please confirm by close of business on Monday 31 October whether your clients intend to appear at the hearing and any position they propose to take.

We enclose drafts of the principal papers to be filed with the Court in respect of such application.

Yours faithfully

Clifford Chance LLP

<<Petition>> <<3rd Witness Statement of GHH>> <<SFXCE2.pdf>> <<Chairman's Report>>
<<Draft Order>> <<10th Witness Statement of GHH>> <<Global Liquidation Order>>
<<Schedule to Global Liquidation Order>>

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For further information about Clifford Chance please see our website at
http://www.cliffordchance.com or refer to any Clifford Chance office.

Lovells

Exhibit 6

Atlantic House
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Tel: +44 (0) 20 7296 2000
Fax: +44 (0) 20 7296 2001

28 October 2005

By fax and post

Direct line 020 7296 5457
philip.wilkinson@lovells.com
Direct fax 020 7296 2001

Our ref F1PJW/JBB1878650.2
Matter ref U0288/00018

Clifford Chance LLP
10 Upper Bank Street
London
EC4 5JJ

For the attention of David Steinberg Esq

Dear Sirs

**CENTURY INDEMNITY COMPANY AND OTHER ACE GROUP COMPANIES (THE "ACE COMPANIES")
THE HOME INSURANCE COMPANY (IN PROVISIONAL LIQUIDATION) (THE "COMPANY")**

We refer to the hearing of the Company's application set down for 3 November 2005 (the "Hearing") for sanction of the Scheme of Arrangement (the "Scheme") approved by Scheme Creditors (as defined in the Scheme) on 8 September 2004.

As you are aware, the proposed Scheme represents the implementation of an agreement reached between the English Joint Provisional Liquidators of the Company ("JPLs") and those selected by them to be Scheme Creditors ("the Agreement"). The role of the JPLs has always been recognised to be subsidiary to that of the New Hampshire Liquidator (the "Liquidator") and we believe it to be common ground that the JPLs act in accordance with his direction. This is reflected in the fact that the Agreement specifically refers to the Liquidator's approval of the Agreement.

The ACE Companies are concerned as to the timing of the current application and the potential implications of that timing for the orderly conduct of the Company's New Hampshire liquidation. In particular, they are concerned that the Company (acting by the JPLs) has made this application when it is on notice that, on 21 October 2005, the ACE Companies filed Notice of Appeal to the New Hampshire Supreme Court ("Supreme Court") against the decision of the New Hampshire Superior Court ("Superior Court") in its Order of 22 September 2005 (the "Approval Order"). By that Notice of Appeal, the ACE Companies seek a ruling of the Supreme Court including in particular on whether the Superior Court:

- (i) erred in ruling that the Liquidator was authorised pursuant to the general provisions of RSA 402-C:1 and RSA 402-C:25 to enter into the proposed agreement and compromise with AFIA Cedants (being the agreement comprised in and to be effected by the Scheme);

Alicante Amsterdam Beijing Berlin Brussels Chicago Dusseldorf Frankfurt Hamburg Ho Chi Minh City Hong Kong London Madrid Milan Moscow Munich New York Paris Prague Rome Shanghai Singapore Tokyo Warsaw Associated offices: Budapest Zagreb

The partners in the firm are solicitors or registered foreign lawyers or registered European lawyers. Regulated by the Law Society.
A list of the partners and their professional qualifications is open to inspection at the above address.

- (ii) erred in ruling that the payments to AFIA Cedants under the proposed agreement and compromise would qualify as administrative costs pursuant to RSA 402-C:44,1; and
- (iii) erred in failing to evaluate the fairness and reasonableness of the proposed agreement and compromise in accordance with the test set forth in the cases cited by the Supreme Court in the Order of the Supreme Court of 13 September 2004.

A parallel appeal has been filed by Benjamin Moore & Co., which is another party in interest which also challenges the decision of the Superior Court. For simplicity we refer below (save where otherwise noted) only to the appeal made by the ACE Companies, although what is said in relation to their appeal applies equally to the Benjamin Moore & Co. appeal.

If the Supreme Court reverses the decision of the Superior Court, the consequence will be that the proposed agreement and compromise will have been held to be contrary to New Hampshire law.

The prospect of the Supreme Court taking such a course is by no means a remote possibility given that the Supreme Court has already, on two occasions, remitted the matter back to the Superior Court on the basis that the Superior Court had failed adequately or at all to address relevant issues.

The ACE Companies question the appropriateness of an application being made to approve the Scheme (and, therefore, of the Hearing taking place) whilst there remains on foot litigation before the courts of the domiciliary liquidation, in which the propriety or otherwise of the proposed agreement and compromise which the Scheme is intended to implement, remains to be finally resolved. They consider that this issue should be finally resolved by the New Hampshire courts before steps are taken which are directed to enable the implementation of the Scheme. If that does not happen there could be unsatisfactory consequences.

Benefit to the Company

By way of example of the consequences mentioned above, we note that in paragraph 18 of the Petition there is an express averment that-

"It will be for the benefit of the Company that the Scheme should be sanctioned by this Court."

This averment is not a mere formality as it is central to the approval process that the court will have to specifically address the issue of benefit to the Company in deciding whether to sanction the Scheme.

However, this is one of the central issues raised by the appeal to the Supreme Court. The Order of the Superior Court contains, at pages 26 – 33, a lengthy analysis of the supposed benefit to the liquidation estate of the Agreement (which is the foundation on which the Scheme is built and without which it must fall). The Court made findings concerning the potential benefits to the Company which involved a rejection of the arguments advanced by the ACE Companies and by Benjamin Moore & Co. before that Court and which are challenged by Question 3 of the ACE Companies' Notice of Mandatory Appeal and by Question 1 of the Mandatory Notice of Appeal filed by Benjamin Moore & Co.

Whilst nothing said by the English court can or should have any probative or evidentiary value in the proceedings before the New Hampshire courts (including the pending appeals) there is plainly a risk of confusion if the English court is asked to make findings of fact in relation to the benefits

of the Scheme to the liquidation estate in advance of a final determination by another court already exclusively seised of that same issue at the appellate level.

This leads us to question the motivation underlying the decision to press ahead now with this application. The ACE Companies are concerned that the Company is only making a sanction application in respect of the Scheme at this time to obtain a litigation advantage in the pending appellate proceedings. They fail to see otherwise how the making of such an application at this time (with its attendant costs), where there are pending appellate proceedings, furthers the interests of the Company's creditors.

Whilst we are clearly of the view that any findings of fact by the English court can have no relevance to the pending appeals and that nothing said by the English court should affect the outcome of the pending appeals, we are nonetheless, as we note above, concerned that there may be scope for confusion before the New Hampshire courts as to the status in the New Hampshire proceedings of any findings made by the English court. Please therefore confirm whether the JPLs are able and willing to give an irrevocable assurance and confirmation that, if the application were to be heard now and the Scheme were to be approved, such approval would not in any way be relied upon in any proceedings before the New Hampshire courts (including the pending appeals to the Supreme Court) as evidencing the supposed benefit to the Company in implementing the Scheme or giving rise to some form of issue estoppel on that question?

When assessing the question of benefit to the Company in sanctioning the Scheme at this stage rather than awaiting the outcome of the pending appellate proceedings, the court will have to have regard to the costs implications of giving its sanction now. This in turn depends upon whether the ACE Companies are justified in their concern that there is potential for significant wasted costs to be incurred if the appeals are successful. We address this question in the following section of this letter.

What if the Supreme Court appeal is successful?

We are unclear what it is intended should happen if the New Hampshire appeal is successful. In paragraph 30.5 of Gareth Hughes' 3rd Witness Statement he indicates that it will be a matter for the Liquidator following consultation with the Scheme Administrators and the Creditors' Committee to determine whether the Scheme should then terminate. We assume that before embarking upon the present application in the face of a pending appeal, there must have been discussion between the Liquidator and the JPLs (as JPLs and as proposed Scheme Administrators) as to what would happen in the event that the appeal is successful. Could you please confirm whether or not there have been any such discussions and, if so, what (if any) conclusions have been reached. We believe that the court (and we) are entitled to full and frank disclosure on this issue.

There are a number of questions which are not addressed in Gareth Hughes' 3rd Witness Statement. In particular, what do the JPLs presently anticipate will happen in or to the Scheme if it is sanctioned and the Approval Order is reversed? For example (and hypothetically), if the Scheme were to be terminated after a distribution had been made, is there any mechanism for it to be clawed back?

This will largely depend on what steps will have been taken in the Scheme prior to the determination of the pending appeal. This gives rise to two further questions:-

1. Is it intended to implement the Scheme, if sanctioned (and assuming satisfaction of the other matters on which the Scheme is conditional, as set out in paragraph 8.2 of the Scheme) prior to the decision of the Supreme Court on the propriety of the proposed

agreement and compromise under New Hampshire law being handed down? If not, what is the intention?

2. What do the JPLs (as the proposed Scheme Administrators of a Scheme for which approval is being sought in a week's time) anticipate will have happened in the Scheme before the determination of the Supreme Court appeal, which we are told will have occurred no later than mid 2006?

There is also a significant costs issue. In the New Hampshire proceedings the uncontroverted evidence showed that the JPLs estimate of the total anticipated costs of the Scheme (and the provisional liquidation) were around US\$ 20 million, of which \$4 million have already been incurred as fees payable to the JPLs and their professional advisers. This leaves a further US\$ 16 million of potential additional costs yet to be incurred. We would like to be informed as to the JPL's current best estimate as to what part of those additional costs is it anticipated will have been incurred by mid 2006 if the Scheme is approved now? If those additional costs are incurred and the Scheme is then ultimately abandoned, it is our understanding that those costs will be irrecoverable. Can you please confirm whether this accords with the JPL's own understanding?

The position of the ACE Companies at the Hearing

In order to decide what stance to take at the Hearing, the ACE Companies require the JPL's responses to the various issues and questions identified above by 5.00 pm on Monday 31 October 2005. Whilst we recognise that this gives you only a limited time to respond, this is as a result of time constraints entirely of your own making. A slightly longer lead time would, no doubt, have given both parties the opportunity to identify and seek to resolve or address in proper form, the issues to which the application is likely to give rise. In this regard we note that we were only supplied with copies of drafts of the documents that you intend to rely upon at the Hearing at 3.54 PM on Wednesday 26 October (effectively one working day ago) and that you have advised us that the documents may not be finalised until a day or two before the Hearing. What is said in this letter reflects the issues which we believe arise on the basis of the existing drafts. If the drafts change, there may be other issues which arise.

The ACE Companies will be represented at the Hearing and to the extent that these questions are not answered adequately, we will draw this fact to the attention of the court at the Hearing.

Although the ACE Companies have not been invited to participate in the Scheme, the Superior Court has previously determined that they have a legitimate interest in opposing the Liquidator's attempts to implement the Scheme. We remind you in this regard that, by its Order of 10 August 2004, the Superior Court made a specific finding that:-

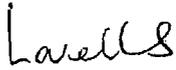
"the direct interest of ACE Companies and Benjamin Moore & Co. are interests that would be prejudiced absent an opportunity to respond and demonstrate the potential harm that might be posed by the Liquidator's endorsement of the agreement at issue....Accordingly, ACE Companies and Benjamin Moore & Co. have standing to challenge the agreement."

In those circumstances, we believe that they have a legitimate interest in seeking the confirmation and the information identified above.

Further and in any event, the application for sanction is one made with no named respondent and is properly to be regarded as one in respect of which the JPLs (as officers of the court) owe an obligation of full and frank disclosure to the court. We regard the information sought in this letter as material to the exercise of the court's discretion and as information with which the court should therefore, in any event, be provided.

We await your response.

Yours faithfully

A handwritten signature in cursive script that reads "Lovells".

cc Gary Lee - Lovells, New York
Joe Bannister - Lovells, London
Tom Wamser - Century Indemnity

Exhibit 7

Cronin, Della L.

From: Lee, Gary [Gary.Lee@lovells.com]
Sent: Tuesday, November 01, 2005 8:52 AM
To: Leslie, J. David
Subject: Scheme sanction

David, further to my message last night the Superior Court Order is automatically stayed by the appeal filed by the Ace Companies under Superior Court Rule 74.

Accordingly, sanction at this time predicated on an unenforceable order is inconsistent with NH practice.

Given the short time frame, if I do not have written confirmation by noon today that the hearing has been adjourned we will seek a confirmatory stay in NH and oppose the application in the UK.

Regards,

Gary S. Lee
Lovells
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New York, NY 10022
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