

**Century Indemnity Company v Brooklyn Union Gas Company**

2003 NY Slip Op 30200(U)

May 16, 2003

Supreme Court, New York County

Docket Number: 603405/01

Judge: Louise Gruner Gans

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: HON. LOUISE GRUNER GANS  
*Justice*

PART 61

Brooklyn Union Gas Company

INDEX NO. 403087/02

- v -

American Home Assurance  
Company, Et Al.

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. 002

MOTION CAL. NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for \_\_\_\_\_

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

PAPERS NUMBERED

**SCANNED**

MAY 20 2003

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion *is referred for renewed decision and order*

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE

Dated: 5/16/03

Check one:  FINAL DISPOSITION

NON-FINAL DISPOSITION

J.S.C.

HON. LOUISE GRUNER GANS

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK : PART 61

-----X

CENTURY INDEMNITY COMPANY,

Index No. 603405/01

Plaintiff,

- against -

BROOKLYN UNION GAS COMPANY, et al.,

Defendants.

-----X

BROOKLYN UNION GAS COMPANY,

Index No. 403087/01

Plaintiff,

- against -

AMERICAN HOME ASSURANCE COMPANY, et al.,

Defendants.

-----X

**Louise Gruner Gans, J.S.C.**

Non-parties The Home Insurance Company in Rehabilitation ("Home") and the Commissioner of the State of New Hampshire move to stay this action for a period of ninety days (until June 3, 2003) pursuant to the rehabilitation order issued by the Superior Court of the State of New Hampshire on March 5, 2003.

Home is a New Hampshire corporation subject to regulation by that state's Insurance Department. On March 5, 2003, the Superior Court of New Hampshire granted the petition of the New Hampshire Commissioner of Insurance to place Home into voluntary rehabilitation. The court issued a Rehabilitation Order

appointing the Commissioner as Home's Rehabilitator. Paragraph (g) (1) of the Rehabilitation Order stayed:

[t]he commencement or continuation of a judicial, administrative, or other action or proceeding against The Home or any insured of The Home that was or could have been commenced before the commencement of this case, or to recover a claim against The Home that arose before the commencement of the Rehabilitation, for ninety (90) days, except as may be modified by further order of the Court.

Section 18 of New Hampshire's Insurers Rehabilitation and Liquidation Act provides that the rehabilitator "immediately consider all litigation pending outside this state and shall petition the courts having jurisdiction over that litigation for stays whenever necessary to protect the estate of the insurer."

The motion for a stay is granted as to Home only. The New Hampshire order is entitled to full faith and credit (see, e.g., Beecher v Lewis Press Co., 238 AD2d 927 [4<sup>th</sup> Dept 1997]). Additionally, the order should be enforced insofar as reciprocity is required under the Uniform Insurers Liquidation Act (the "Uniform Act") as codified in sections 7408 through 7415 of New York's Insurance Law. The Uniform Act, which governs "delinquency proceedings" (including rehabilitations), provides a uniform, orderly and equitable system for (1) the making and processing of claims and (2) the administration of the assets and liabilities of multistate insurers such as Home (see, Rose v The Fidelity Mut. Life Ins. Co., 207 F Supp2d 50, 53 [EDNY 2002]; Ambassador Ins. Co. v Allied Programs Corp., 165 AD2d 806 [1<sup>st</sup> Dept 1990]; G.C. Murphy Co. v Reserve Ins. Co., 54 NY2d 69 [1981]). The Act requires New York to recognize orders issued in

proceedings instituted in "reciprocal states," including provisions imposing stays on all civil actions maintained in New York against the affected insurer and its insured (see, Public Service Truck Renting Inc. v Ambassador Ins. Co., 175 AD2d 632 [4<sup>th</sup> Dept 1991]). New Hampshire is a reciprocal state within the meaning of the Uniform Act because it has "in substance and effect adopted the relevant provisions of the uniform insurers liquidation act" (see Bath Iron Works Corp. v Tufts Health Plan of New England, Inc., 1999 WL 33117127, \*1, fn. 1 [D Me 1999]).

Contrary to plaintiff's contention, the case law does not support any meaningful distinction between rehabilitation orders and liquidation orders for the purpose of full faith and credit or reciprocity. Moreover, even were those doctrines not applicable, Home would be entitled to a stay under the principle of comity (see, Twin City Bank v Mut Fire Marine & Inland Co., 646 F Supp 1139 [SDNY 1986], aff'd 812 F2d 713 [2d Cir 1987]).

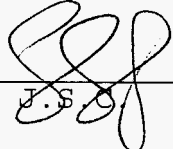
Although defendant Brooklyn Union Gas Co. argues that a stay should be issued only to prevent direct threats to an insurer's assets, temporary relief from litigation expenses is also a valid objective (Beecher, supra at 928). On the other hand, a stay as to the insurer defendants other than Home is not necessary to achieve that purpose. Accordingly, Home's request for a stay of the action as to parties other than itself is denied.

Accordingly, it is

ORDERED, that the motion of non-parties The Home Insurance Company in Rehabilitation ("Home") and the Commissioner of the State of New Hampshire move to stay this action for a period of ninety days (until June 3, 2003) pursuant to the rehabilitation order issued by the Superior Court of the State of New Hampshire on March 5, 2003 is granted, as to proceedings involving Home only.

Dated: 5/16/03

ENTER :

  
\_\_\_\_\_  
J. S. C.

**HON. LOUISE GRUNER GANS**