

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF RICHLAND )  
 )  
 Companion Property and Casualty )  
 Insurance Company, )  
 )  
 Petitioner, )  
 )  
 vs. )  
 )  
 The South Carolina Procurement Review )  
 Review Panel, Rooney McArthur & Suggs, )  
 Inc., and The South Carolina Insurance )  
 Reserve Fund. )

IN THE COURT OF COMMON PLEAS

C/A No.: 00-CP-40-1714

**FILED**  
 2001 JAN 31 PM 2:04  
 BARBARA A. GIBSON  
 C.C.C. & G.

ORDER DENYING LIFT OF THE  
 AUTOMATIC STAY OR, IN THE  
 ALTERNATIVE, INSTITUTING A  
 STAY PENDING OUTCOME OF APPEAL

(IN RE: Protest of Companion Property  
 and Casualty)

A hearing was held in this motion on January 23, 2001, on application of Petitioner Companion Property and Casualty Insurance Company (Companion) to lift the automatic stay under Rule 225(a) arising out of Rooney, McArthur & Suggs, Inc.'s (RM&S) appeal of this Court's Order of December 12, 2000 canceling its contract to provide reinsurance to the State of South Carolina and re-awarding it to the lowest responsive and responsible bidder (Companion). In the alternative, Companion moves for a declaratory judgment that the relief granted it in such Order was not stayed by RM&S' appeal because such relief was injunctive in nature.

After careful deliberation and upon review of the submissions of counsel, as well as considering their arguments, I hereby deny Companion's motion to lift the automatic stay and deny, in the alternative, enforcement of the Order of December 12, 2000 prior to the outcome of this appeal.

Under Rule 225(d)(1), SCACR, an application for an order lifting the automatic stay must generally be made to the court which entered the order on appeal. Under Rule 225(d)(1), SCACR,

the court which entered the order on appeal retains jurisdiction of matters not stayed by the appeal. Under Rule 62(c), SCRPC, when an appeal is taken from an order granting an injunction, the court entering such order may, in its discretion, suspend the injunction during the pendency of the appeal on such terms as it considers proper.

Pursuant to Rule 225(c)(1), this Court finds that, assuming that the relief granted in its Order of December 12, 2000 is stayed under Rule 225(a), a lift of the automatic stay would not be necessary to preserve jurisdiction of the appeal or to prevent a contested issue from becoming moot, as is required by Rule 225(d)(2). Indeed, at the hearing on this motion, the attorney for the Insurance Reserve Fund (IRF) represented to this Court that the IRF believes that the term of the reinsurance contract currently in dispute will not begin until *after* the conclusion of this litigation. Therefore, jurisdiction of the appeal and ripeness of the issues will actually be jeopardized if the automatic stay is lifted.

In addition, this Court is convinced that there are affirmative reasons why the relief granted in its Order of December 12, 2000 should not be granted until after the conclusion of the appeal. Mr. Schmidt, representing RM&S, informed this Court that if the automatic stay is lifted, cancelling the RM&S contract and re-awarding the same to Companion, RM&S will protest the Companion bid. Mr. Schmidt represented to this Court that such protest will stay the re-award of the contract to Companion. This Court finds that any such stay of the re-awarded contract will create serious administrative problems for the IRF and that the significant risk of lapse of reinsurance coverage could have serious adverse affects on the State of South Carolina.

*For these same reasons*, if the relief granted in its Order of December 12, 2001 is injunctive in nature and has not been automatically stayed, this Court, under its continuing jurisdiction and in

GT  
# 2

an exercise of its sound discretion, orders that the relief granted in its Order of December 12, 2000 be stayed until the conclusion of the appeal. Due to the fact that the term of the contract in dispute will not begin until after the conclusion of this litigation, this Court finds that it will be unnecessary to secure the rights of Companion with a bond or otherwise.

Therefore, if the relief granted in this Court's Order of December 12, 2001 has not already been stayed, it is hereby stayed pending conclusion of this litigation, and if the relief granted in this Court's Order of December 12, 2001 has been stayed, Petitioner's motion to lift such stay is denied.

AND IT IS SO ORDERED.

January 30, 2001

  
\_\_\_\_\_  
G. Thomas Cooper, Jr.  
Resident Judge, Fifth Judicial Circuit

BOOK **P.G.** PAGE 828