

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

BATH IRON WORKS)	
CORPORATION,)	
PLAINTIFF)	
)	
v.)	Civil No. 99-365-P-H
)	
TUFTS HEALTH PLAN OF NEW)	
ENGLAND, INC., ET AL.,)	
DEFENDANTS)	

**ORDER ON TUFTS HEALTH PLAN OF NEW ENGLAND, INC.’S
MOTION TO DISMISS OR, IN THE ALTERNATIVE, TO STAY
PROCEEDINGS, AND TO DISSOLVE ATTACHMENT**

It is undisputed that a delinquency proceeding is underway in New Hampshire concerning Tufts Health Plan of New England, Inc. New Hampshire fits the definition of “reciprocal state” under Maine’s version of the Uniform Insurers Liquidation Act. See 24-A M.R.S.A. § 4353(6) (West 1990).¹ The result under the Maine statute is therefore clear: according to section 4369, “[d]uring the pendency of delinquency proceedings in . . . any reciprocal state, no action or

¹ Subsection 6 defines “reciprocal state” as:

any state other than this State in which in substance and effect the uniform insurers liquidation act, as defined in section 4363, is in force, including provisions requiring that the Insurance Superintendent or equivalent insurance supervisory official be the receiver of a delinquent insurer, and in which effective provisions exist for avoidance of fraudulent conveyances and unlawful preferential transfers.

24-A M.R.S.A. § 4353(6). New Hampshire has in substance and effect adopted the relevant provisions of the uniform insurers liquidation act. Compare N.H. Rev. Stat. Ann. § 402-C:1 et seq. (West, WESTLAW through end of 1999 Reg. Sess.) (“Insurers Rehabilitation and Liquidation Act”), with Unif. Insurers Liquidation Act § 1 et seq. (West, WESTLAW current through Aug. 1998). In particular, New Hampshire’s law requires that the insurance commissioner be the receiver of certain delinquent insurers. See N.H. Rev. Stat. Ann. §§ 402-C:16(I), 402-C:21(I). New Hampshire’s law also contains provisions for the avoidance of fraudulent conveyances, see id. §§ 402-C:30-31, and unlawful preferential transfers, see id. §§ 402-C:32-33.

proceeding in the nature of an attachment, garnishment or execution shall be commenced or maintained in the courts of this State [meaning Maine] against the delinquent insurer or its assets.” The *ex parte* attachment obtained by Bath Iron Works in the Maine Superior Court must accordingly be **VACATED** as to the assets of Tufts Health Plan of New England, Inc., and the amended complaint must be **DISMISSED** with respect to Bath Iron Works’s claims against Tufts Health Plan of New England, Inc.

Bath Iron Works argues that the Maine statute violates the Fourteenth Amendment in permitting the New Hampshire Rehabilitator to make determinations concerning the claims of a Maine corporation in the New Hampshire insurance delinquency proceeding. I reject the argument as wholly unpersuasive. The Uniform Act contemplates reciprocity, and Maine relies upon New Hampshire to proceed fairly, just as New Hampshire relies upon Maine to proceed fairly. The process is not inherently defective. If unfairness occurs in the New Hampshire proceeding, it can be attacked when and as it occurs. Until then, there is no violation of due process and the Maine statute is enforceable.

SO ORDERED.

DATED THIS 22ND DAY OF DECEMBER, 1999.

D. BROCK HORNBY
UNITED STATES CHIEF DISTRICT JUDGE