THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS. SUPERIOR COURT

IN RE THE LIQUIDATION OF THE HOME INSURANCE COMPANY
DISPUTED CLAIMS DOCKET

DOCKET NUMBER 03-E-0106

In Re Liquidator Numbers: 2011-HICIL-50
2011-HICIL-51

CLAIMANT ARIZONA PROPERTY AND CASUALTY INSURANCE GUARANTY FUND'S MOTION TO RECOMMIT AND OBJECTIONS TO ORDER ON THE MERITS BY REFEREE FILED ON DECEMBER 20, 2012

Pursuant to Section 20 of the Restated and Revised Order Establishing Procedures Regarding Claims Filed with the Home Insurance Company in Liquidation entered by this Court on January 19, 2005, Claimant Arizona Property and Casualty Insurance Guaranty Fund (the "Fund") hereby moves to recommit and objects to the Order on the Merits filed by the Referee on December 20, 2012 (the "Order") with respect to two proofs of claims that the Fund filed with the Home Liquidator. (This motion and objection is referred to herein as the "Motion"). These claims are referenced as Liquidation Numbers 2011-HICIL-50 ("Claim No. 50") and 2011-HICIL-51 ("Claim No. 51") (collectively, the "Claims"). The Fund seeks a total of $446,838.25 on the claims as Class I claims in accordance with RSA 402-C:44 and 404-B:11.

A copy of the Order is Attachment A hereto. The Fund requests that this Court review and reject the legal rulings and findings by the Referee set forth in the Order. The Fund also requests oral argument on this Motion.

For purposes of this Motion, the Fund relies on the following which were submitted to the Referee with respect to the Claims: (1) the affidavit of Michael Surguine ("Surguine Aff."), Executive Director of the Fund, together with the Exhibits A through N attached thereto, all of which are Attachment B to this Motion, (2) the affidavit of Mark Steckbeck, Vice President for

Legal Affairs of the NCIGF ("Steckbeck Aff."), which is Attachment C to this Motion, (3) the Affidavit of John Draftz ("Draftz Aff."), Claims Manager of the Fund, along with exhibits 1 through 80 attached thereto, which are Attachment D to this Motion; and (4) the exhibits submitted by the Liquidator in these proceedings which are Attachment E to this Motion.

As grounds for this Motion, the Fund would show this Honorable Court as follows:

PRELIMINARY STATEMENT

Claim No. 50

In that part of the Order relating to Claim No. 50, the Referee upheld the Liquidator's disallowance of $359,851.68 in expenses that the Fund incurred in 2008 and 2009 and allocated to the Home insolvency. The Fund contended that such expenses are recoverable by the Fund as a first priority claim against Home pursuant to the New Hampshire Insurers Rehabilitation and Liquidation Act, RSA 402-C (which provides for the order of distribution of claims against the Home estate), and The New Hampshire Insurance Guaranty Association Act, RSA 404-B:11 (which provides that the expenses of the Fund in handling claims shall be accorded the same priority as the Liquidator's expenses). The Fund's Claim No. 50 was based on the so-called "open claims" allocation formula as accepted by the Liquidator. Such "open claims" formula allocates expenses based on a ratio the numerator of which is the number of open claim files the Fund was handling with respect to Home in a given year and the denominator of which is the total number of open claims the Fund was handling for all insurance company insolvencies in that year. The open claims formula presumes that each open claim file is counted equally for purposes of allocation of expenses and does not allocate expenses based on the relative time spent on each file.

In summary, the Referee upheld the Liquidator's disallowance of Claim No. 50 on the ground that the allocations of the Fund's expenses to Home in 2008 and 2009 were

unreasonable." See Order at 6. The Referee's legal conclusion that the Liquidator may disallow the allocations as "unreasonable" is an error in law. Moreover, the Referee's ruling is based on the following determinations which are not proper grounds on which to deny the Fund's claim:

(1) with respect to 40 environmental contamination lawsuits brought against Giant Industries, Inc. (the "Giant Claims"), an insured under two general liability policies issued by Home and for which Giant made claims against the Fund for defense and indemnity, the Fund should have allocated expenses to Home based on only two claim files (one for each Home policy), rather than 80 claim files (one file for each lawsuit for each policy period) because the Fund did not spend "substantial time" in handling those 80 files;

2) allocation of expenses based on 80 claim files resulted in greater dollar amounts being allocated to Home than had been allocated to Home in previous years and greater percentages of total expenses being allocated to Home than the percentages allocated to Home in previous years; and

(3) the Fund's claim for expenses amounted to 40% of the Fund's total operating expenses but the costs paid by the Fund in defending a coverage action involving the Giant Claims were "limited to $28,817.38."

See Order at 5-6.

The Referee erred as a matter of law in ruling that the Liquidator may disallow the Fund's claim for expenses whenever the use of the open claims formula results in an amount of allocated expenses that the Liquidator deems "unreasonable" based on (a) the Liquidator's assessment that the time spent by the Fund in handling the claims was not "substantial," (b) the Liquidator's comparisons to the lesser amounts and percentages of the total expenses allocated by the Fund to the Home in prior years, or (c) the Liquidator's comparison of such allocated operating expenses to costs incurred by the Fund in defending a coverage action involving the

Giant Claims. Significantly, the Referee did not cite, and there is no case law or statutory authority to support her legal conclusion that, notwithstanding the Liquidator's acceptance of the open claims allocation method, the Liquidator may second-guess and disallow the Fund's allocation of expenses to Home as "unreasonable" based on these or other considerations.

Under RSA 404-B:11 the Fund has a right to recover as a first priority against Home the expenses of the Fund in handling Home claims. The Liquidator does not dispute that it is proper to determine the amount of the Fund's expenses in handling Home claims by multiplying the amount of all of the Fund's expenses by a fraction the numerator of which is the number of the Fund's open files on Home claims and the denominator of which is the number of the Fund's open files on claims for all insolvencies (the so-called "open claims" formula). The Liquidator has not asserted that the expenses of the Fund (rent, employee costs, etc.) were not in fact incurred by the Fund or that such expenses were somehow incurred improperly. The Liquidator's sole contention is that the 80 Giant Claims cannot be counted as open claims for purposes of applying the open claims formula because the result is unreasonable and the files opened by the Fund for those claims are in effect sham files. There are several flaws in the Liquidator's position.

First, RSA 404-B:11 does not limit the Fund's recovery to "reasonable" expenses. The Fund has a right to recover as a first priority provided the expenses were "expenses of the association…in handling [Home] claims." Compare RSA 402-C:44(I) (defining the Liquidator's expenses of administration as the "actual and necessary costs of preserving or recovering the assets[,]" including "reasonable attorney's fees"). The reasonableness of the result of application of the open claims formula is not a condition of recovery under RSA 404-B:11. The evidence shows that the 80 files were not sham or illusory files and accordingly the allocated expenses were expenses in handling claims and thus are recoverable at first priority.

Second, even assuming *arguendo* that the Liquidator may disallow a claim for expenses if the amount sought is unreasonable, the Liquidator has failed to demonstrate that the amount claimed by the Fund for expenses is unreasonable and in any event the evidence is to the contrary.

In determining unreasonableness, the Referee first concluded that if the time spent in handling a claim was insubstantial such claim cannot be counted for purposes of applying the open claims formula. Such a test is not proper because it is arbitrary in view of the Liquidator's and the Referee's failure to set forth any standard for what amount of time spent on handling a claim is "substantial" enough for the claim file to be counted under the open claims method for allocating expenses. Also, using such a test to determine "reasonableness" of expense allocation is an improper back door attempt to evaluate the Fund's claim based on the "time spent" method of allocation, even though the Liquidator has accepted the Fund's "open claims" method of allocation. The open claims method by definition allocates expenses based solely on the number of open files for each insurer insolvency. Each open file is counted equally, irrespective of the relative amount of time spent on each file. Furthermore, to the extent the Referee's determination of insubstantial time spent on each file is deemed to constitute a fact finding, no reasonable person could find such fact on the evidence presented. Specifically, the Referee found that the Fund "did not spend 'substantial' time" handling each of the 80 claims "given the limited [claim file] notes regarding the work done." This finding was based on her findings of "no entries in the claims files constituting more than three pages and none for a period of months." See Order at 5-6. As set forth below, no reasonable person could have made the finding that the Fund did not spend substantial time in handling each of the 80 claims in view of the record evidence submitted by the parties in this proceeding.

Because the Liquidator has for many years accepted, and for purposes of the Fund's claims accepts, the open claims formula as a proper allocation method, the appropriate standard to determine the validity of the allocation is not whether "substantial time" was devoted to each file, but rather whether the maintenance of 80 claim files for the Giant Claims was a sham to shift the Fund's expenses of handling claims against other insolvent insurers to the Home estate. Significantly, the Liquidator did not come forward with any evidence that the Fund had any illegitimate or improper purpose in opening 80 claims with respect to the Giant lawsuits. The undisputed evidence shows that the Fund's decision to open 80 claims files was based on 40 separate demands for insurance coverage under two insurance policies that related to 40 separate environmental lawsuits against a Home policyholder and that the Fund performed work on each file and, therefore, it was not a sham to shift the Fund's expenses of handling claims against other insolvent insurers to the Home estate.

The Referee's second conclusion—that applying the open claims formula using 80 files for the Giant Claims is unreasonable because it results in a greater amount and percentage of the Fund's expenses being allocated to Home compared to prior year—has no legal significance. The fact that expenses allocated to Home were greater than in previous years is not a legitimate basis on which to declare the Fund's allocations "unreasonable." Different results do not *ipso facto* mean that the results are unreasonable. The allocated dollar amount and Home's relative share of the Fund's expenses are driven by the Home's relative share of the Fund's open files, which may vary from year to year depending both on the number of claims relating to Home policies and the number of claims being handled by the Fund relating to policies of other insolvent insurers.

Similarly without legal significance is the Referee's third conclusion that the Fund's allocations of expenses to Home in 2008 and 2009 are unreasonable because they were 40% of

the Fund's total operating expenses when the defense costs incurred by the Fund on the coverage action involving the Giant Claims was "limited to $28,817.38." The amount of defense expenses incurred as compared to the amount of operating expenses sought by the Fund is an apples to oranges comparison and is irrelevant for the reasons discussed below. As a matter of law such a specious comparison cannot support a conclusion that the expenses are unreasonable.

Claim No. 51

In the other part of her Order that relates to Claim No. 51, the Referee upheld the Liquidator's disallowance of $48,207.44 of the $52,572 total sought for dues the Fund paid in 2009 to the National Conference of Insurance Guaranty Funds ("NCIGF"). The Referee upheld the disallowance on the ground that the amount allocated to the Home insolvency, based on the Fund's opening of 80 open claim files for the Giant Claims, "led to a significantly higher allocation to Home than in other years." The Referee erred as a matter of law in ruling in favor of the Liquidator's disallowance because the open- claims formula used by the Fund to allocate NCIGF dues has been accepted by the Liquidator as a proper allocation formula and there is no evidence that the Fund's creation of 80 claim files for the Giant Claims was a ruse or sham. Accordingly, for the reasons mentioned above with respect to Claim No. 50, this Court should review and reject this part of the Referee's Order.

In her Order with respect to Claim No. 51 the Referee also upheld the Liquidator's classification of all of the NCIGF dues paid by the Fund (the total of $75,881.97, which includes an amount allowed by the Liquidator of $27,674.53) as a Class V "residual claim" rather than a first-priority Class I claim for expenses in handling claims pursuant to RSA 402-C:44 and 404B:11. (The Liquidator concedes there will be no distribution on Class V claims. See Order at 7.) This part of her Order should be reviewed for two reasons. First, the Referee erred as a matter of law in concluding that the Fund, and not the Liquidator, has the burden of proving that

all of the NCIGF dues allocated by the Fund to Home are related to claims handling and should be classified as Class I claims. See In the Matter of First Central Insur. Co. v. Auerbach, 15 A.D.3d 658, 659 791 N.Y.S.2d 123, 124 (App. Div. 2nd Dept. 2005). The Referee should have ruled that the Liquidator has the burden of establishing that the Fund's claim for NCIGF dues is a Class V claim.

Even assuming *arguendo* that the Fund has the burden of proof on this issue, the Fund has met its burden based on the Referee's express finding that "the Fund has demonstrated that [NCIGF's] activities assist [the Fund's] personnel in handling claims," see Order at 7, and on the undisputed testimony submitted by the Fund from the NCIGF's Assistant Vice President that shows that the primary function of the NCIGF is to assist guaranty funds, including the Fund, in fulfilling their responsibilities in handling claims, and that the NCIGF dues paid by members like the Fund are all of one piece as the NCIGF has not established two categories of dues—dues relating to claims handling activities and dues relating to the NCIGF's other functions. See Steckbeck Aff. ¶ ¶ 3-7.

STATEMENT OF THE FACTS

With respect to expenses incurred by the Fund from January 1, 2006 through September 30, 2010, which is the basis for the Fund's Proof of Claim at issue in Claim No. 50, in its Notice of Partial Determination dated July 12, 2011, the Liquidator allowed $31,000 for each of 2008 and 2009 (after "removing" expenses for NCIGF dues and investment management fees from the administration expense claim). The Fund had claimed expenses of $254,982.76 and $166,868.92, respectively, in those years. See Surguine Aff. Ex. A. The stated basis for such disallowance by the Liquidator was that the administrative expenses submitted by the Fund for 2008 and 2009 were significantly higher than the $31,084 amount which the Fund had submitted in 2007, and that such increase was attributable to an increase in the number of open claims

reported by the Fund in 2008 and 2009, which number the Liquidator challenged with respect to the Giant Claims. See Surguine Aff. ¶ 4 and Exhibits B and C. Specifically, the Liquidator asserted that because "late notice was a policy level defense, the [Fund] (consistent with the Home's approach) should have only established two claim records, i.e., one for each primary policy." See Surguine Aff., Ex. C. The Liquidator took the position that "attempting to allocate on the basis that the [Fund] was handling 80 individual claims does not reflect the underlying circumstances," and that "[g]iven that the [Fund] had Giant's [coverage] action dismissed because of late notice, the [Fund] did not conduct work on a claim-by-claim basis." Id. Separate and apart from the reductions for NCIGF dues and investment management fees, this resulted in a disallowance of $223,982.76 for 2008 and $135,866.92 for 2009 – a total disallowance of $359,851.68.

With respect to expenses attributable to membership fees paid by the Fund to NCIGF in the amount of $75,881.97 for the period from 2006 to 2010, which were the basis for the Fund's Proof of Claim at issue in this proceeding as 2011-HICIL-51, in its Notice of Partial Determination, dated July 12, 2011, the Liquidator allowed $27,674.53. See Surguine Aff. Ex. N. The Liquidator's stated reason for disallowing $48,207.44 of the NCGIF dues paid was that the dues reported in the first quarter of 2009 were 10 times the amount reported in 2008. See Surguine Aff. Ex. B. The Liquidator also stated that the expense for NCIGF dues "does not appear to meet the definition of Class I administration expenses" and that the amount allowed will be as a Class V claim. Id. The Fund timely notified the Liquidator of its objection to these determinations.

The Fund allocates its administrative expenses to open insolvency cases, of which the Home insolvency was just one during the period at issue in this proceeding. See Surguine Aff. ¶ 5. The method of allocating expenses, including NCIGF dues, is based on the number of open

claims being handled by the Fund. Id. An allocation percentage for each open receivership estate is determined by dividing the number of open claims for a specific insolvency by the total population of open claims being handled by the Fund. Id. The total of the administrative expenses incurred by the Fund is then multiplied by the allocation percentage for each estate, and the product is reported to the Liquidator as the Fund's administrative expense for the applicable period. Id. The allocation percentages are recalculated each quarter. Id.

From inception of the insolvency of Home, the Fund has incurred and allocated to the Home in Liquidation $798,464.26 in administrative expenses based on the open claims allocation method. See Surguine Aff. ¶ 2. Of that allocated amount, $88,139.58 was attributable to NCIGF membership fees paid by the Fund. Id. The Fund is not the only state guaranty fund which has calculated and allocated administrative expenses to Home in this manner over the years; "[o]f the fifty-two states or other entities with Guaranty Funds, 6 use the number of open claims, 39 use the "time spent" on the file method, and 7 use a combination of the two." See Order at 5.

An "open claim" for purposes of the formula is a claim that was opened because there was a demand for coverage under a policy issued by an insurer for which the Fund has been activated, and the claim has not yet been fully resolved. See Surguine Aff. ¶ 6. Generally, one claim is opened for each incident or occurrence with regard to which a demand for coverage is made. Id. If the demand for coverage arising out of an incident or occurrence could trigger coverage under more than one policy issued by the insolvent insurer, then a separate claim is opened as to each policy, as each policy requires a separate evaluation of coverage, declarations, conditions and endorsements. Id. The Fund is obligated by statute to respond to the party seeking coverage, to investigate the matter and to make a determination as to whether Fund coverage applies to the claim. Id. See also A.R.S. § 20-664.

The Fund opened and handled each of the Giant Claims as separate claims. In February 2008 the Fund received written notices from Giant's parent company, Western Refining, Inc. ("Western") of forty (40) separate lawsuits filed against Giant for which Western was demanding coverage under the Home Policies. See Surguine Aff. ¶ 7. Those 40 lawsuits were filed in a number of jurisdictions and each of the 40 suits involved separate alleged occurrences of MTBE pollution. On or about March 4, 2008, the Fund opened eighty (80) claim files, forty (40) claims under each of the two Home Policies, because each lawsuit represented an unpaid claim, and could therefore constitute a covered claim under the Fund's enabling act, A.R.S. §§ 20-661 through 20-680, and because each lawsuit potentially triggered coverage under each of the Home Policies. See Surguine Aff. ¶ 8. These claims remained opened until 2009. See Surguine Aff. ¶ 17.

John Draftz, the Fund's Senior Claims Adjuster at the time, reviewed each of the complaints against Giant, and reviewed policy information from the Liquidator including information concerning any pollution exclusion clause. See Surguine Aff. ¶ 9 and Ex. I; Draftz Aff. ¶ 3. The Fund devoted time and effort in reviewing the policy information that was then available and considering policy defenses on an individualized basis as to each of the Giant Claims. Draftz Aff. ¶ 3. During that time period the Fund preliminarily concluded both (a) that the Fund appeared to have no statutory obligation because the Fund had been notified of each of the Giant Claims after the bar date established by the Home Liquidation Order, and (b) that based on the policy information that Home had given to the Fund, the Fund may also not have any coverage obligation under the Home Policies to the extent that the Giant claims sought punitive damages, alleged fraud, or alleged knowledge by Giant of the MBTE hazard before inception of the Home Policies, among other things. Draftz Aff. ¶ 4. The Fund also preliminarily concluded that the Fund may not have any statutory obligation under the Home Policies because,

according to the schedule of other insurers for Giant that Home had provided to the Fund, the insured had other primary and excess policies including policies for general liability, excess liability, pollution liability (including pollution liability defense costs), umbrella liability, and underground storage tank pollution, and the Arizona statute governing the Fund required exhaustion of other insurance. Id.

The Fund's notes for each of the 80 claim files reflect that the Fund reviewed the allegations of each Giant Claim and, in addition to noting the late notice/time bar defense, the Fund referenced with respect to each Giant Claim the various other defenses to general liability coverage which could be implicated by the Claims, including but not limited to other insurance, "punitives, fraud, known hazard, etc." See Draft Aff. ¶ 6 and Exhibits 1 through 80 thereto. Although the claim file notes describing the Fund's work on the files are similar in some respect for each of the Giant Claims, the file notes differ based on the varying allegations in the lawsuits concerning the plaintiffs involved, the causes of action asserted, and the type and amount of relief requested. See Draftz Aff. ¶ 7. That review and coverage analysis was in addition to the review and analysis that the Fund conducted, with the assistance of coverage counsel, in April and May 2008 after the coverage action regarding the Giant Claims had been brought and after the Fund had received from the Liquidator additional information regarding the Home policies. See Draftz Aff. ¶ 8.

The Fund eventually made a determination to deny the Giant Claims separately for each claim on the ground that the claims were filed after the bar date asserted by the Fund pursuant to a resolution of the Fund's Board of Directors. Id. The Fund took the position in denying the claims that the bar date applicable to the claims was June 13, 2004 (the Liquidator's bar date). Most of the Giant Claims were denied by letter on March 5, 7, 10, 11, 12 and 14, 2008. See Surguine Aff. Ex. E; Draftz Aff. ¶ 5. The Fund informed Western in those letters that because

"notice of this loss was not received prior to the bar date [of June 13, 2004 as established by the Home Liquidation Order], it is deemed late" and the Fund "will not be able to extend coverage...." The Fund also informed Western that "[t]he Fund reserves all statutory and/or policy defenses it may have in connection with this matter, whether stated or not in this letter" and "reserves its rights to modify its coverage position at any time upon receipt of additional information." Thus, although the Fund initially denied the Giant Claims on the basis of late notice/time bar, the Fund also expressly reserved the right to assert policy defenses and undertook to consider those defenses as to each of the forty lawsuits under each of the Home Policies. See Draftz Aff. ¶ 4. In fact, the Liquidator admitted in his response to the Fund's claim, dated December 24, 2009, that "there were various potential defenses available" to the Fund with respect to the Giant Claims. See Surguine Aff. Ex. C.

At the outset of this dispute the Liquidator took the position that the Fund's use of 80 claim files for allocating its expenses was not proper because the Fund did not need to open a separate claim file for each of the Giant Claims, and did not need to work on them on a claim by claim basis, because the Fund had denied coverage to Western for all of the claims, and eventually avoided any coverage obligation, based on the late notice/time bar defense. See Surguine Aff. Ex. C (in his first response to Fund's claim in December 2009, the Liquidator asserted that "as late notice was a policy level defense, the [Fund] (consistent with The Home's approach) should have established only two claim records, i.e., one for each of primary policy."). In her Order, however, the Referee found that the late notice/time bar defense was never accepted by Western, "was not clearly a winning argument against coverage at the time, and was not the basis for the Fund being dismissed from the coverage action because Western dismissed the action after it "collected its money from other insurers." See Order at 4. The central underlying premise of the Liquidator's denial of the Fund's claim —that it was an open and shut

case that all of the Giant Claims were time barred and, thus, the Fund did not need to open and handle each of the Giant Claims individually—was rejected by the Referee.

With respect to NCIGF dues which are the basis for the Fund's Proof of Claim at issue in Claim No. 51, the Fund reports its total yearly NCIGF dues payments in the first quarter of each year because the NCIGF typically bills for dues in late December and the Fund pays such amounts in the following January. See Surguine Aff. ¶ 19. The NCIGF dues paid by the Fund in January 2008 on account of the NCIGF billing in December 2007 did not reflect an allocation based on the Giant Claims because files for the Giant Claims had not yet been opened as of January 2008. Id. Those files were opened beginning in March 2008 and remained open until 2009. Id. When the NCIGF billed the Fund in December 2008, 80 files were open on account of the Giant Claims as they had been created in March 2008, and the Fund's allocation of a portion of the NCIGF dues to Home for 2009 reflect those 80 claim files. Id.

The Fund has received substantial assistance in handling Home claims on account of the Fund's membership in the NCIGF. See Surguine Aff. ¶ 19. The primary function of the NCIGF is to assist guaranty funds like the Fund in fulfilling their statutory responsibilities to handle claims. See Steckbeck Aff. ¶ 3. While the NCIGF does not itself handle particular claims, the NCIGF plays an important role in assisting guaranty funds in handling claims. Id. The NCIGF assists guaranty funds in coordinating the handling of claims through insured coordinating committees which work directly with liquidators of insolvent insurers, such as the Home, to accomplish the efficient handling of claims by the guaranty funds. Id.

The NCIGF also plays an important role in distributing information from liquidators that is necessary for guaranty funds to handle claims, educating guaranty fund personnel in issues involved in handling claims, working with guaranty funds to resolve issues relating to the handling of claims, assisting in compliance with federal law requirements such as Medicare

secondary reporting relating to the handling of claims, assisting in litigation issues relating to handling claims and maintaining a legal committee which addresses claims handling issues. See Steckbeck Aff. ¶ 4. The primary benefit to guaranty funds of membership in the NCIGF is assistance to guaranty funds in claims handling. See Steckbeck Aff. ¶ 6. The services provided by the NCIGF decrease the overall cost to the guaranty funds of handling claims under the policies of insolvent insurers and, thus, directly benefit the insolvent insurer's estate, because the cost is spread among many guaranty funds as opposed to each guaranty fund dealing separately with matters addressed by the NCIGF. Id.

The dues paid by the Fund and other guaranty funds to the NCIGF are used to pay for the NCIGF staff and facilities required to carry out these activities. See Steckbeck Aff. ¶ 7. Significantly, the dues charged by the NCIGF are not differentiated between dues relating to claims handling activities and dues relating to other functions. Id. The NCIGF has not established two categories of dues—dues relating to claims handling activities and dues relating to other functions. The dues support the NCIGF organization as a whole and the NCIGF does not permit guaranty funds to pick and choose what services they want and thereby receive a reduction in NCIGF dues. Id. A guaranty fund either belongs to the NCIGF and pays the full NCIGF dues and obtains NCIGF benefits including assistance in handling claims as set forth herein, or it does not belong to the NCIGF. Id.

ARGUMENT

A. Standard of Review and Burden of Proof

The standard of review of the Referee's legal conclusions is *de novo*. "The standard of judicial review for findings of fact made by a judicial referee is whether a reasonable person could reach the same conclusion based on the evidence presented." Bianco P.A. v. Home

Insurance Co., 147 N.H. 249, 253, 786 A.2d 829, 833 (2001); see also In re Reiner's Case, 152 N.H. 594, 597, 883 A.2d 315, 318 (2005).

With respect to the Fund's claim at issue in Claim Nos. 50 and 51, the Referee erred as a matter of law in ruling that the Liquidator may disallow the Fund's claim for expenses whenever the "open claims" allocation formula, which formula the Liquidator has accepted and the Fund has used for several years, results in an amount of allocated expenses that the Liquidator deems "not reasonable." The Referee's ruling has no basis in law and is premised on her factual finding that the Fund "did not spend 'substantial' time" handling each of those claims "given the limited [claim file] notes regarding the work done." See Order at 5. As set forth herein, no reasonable person could have reached that conclusion in view of the record evidence submitted by the parties in this proceeding.

The Referee's decision to uphold the Liquidator's disallowance with respect to Claim Nos. 50 and 51 should also be reviewed because the Liquidator did not meet his burden of showing a sufficient basis on which to disallow the Fund's claims. See In the Matter of First Central Insur. Co. v. Auerbach, 15 A.D.3d 658, 659 791 N.Y.S.2d 123, 124 (App. Div. 2nd Dept. 2005) (Superintendent of Insurance who is responsible for providing an economical liquidation of insolvent insurance companies failed to satisfy his burden of demonstrating a sufficient basis for disclaiming coverage for claim). Even if the Liquidator does not have the burden, the Referee's ruling is incorrect for the reasons stated herein.

B. This Court Should Recommit, Review and Reject Those Parts of the Referee's Order Which Upheld the Liquidator's Disallowance of $359,851.68 (Claim No. 50) and $48, 207.44 (Claim No. 51) for Fund Expenses Because The Referee Erred as a Matter of Law in Ruling that the Liquidator May Disallow the Fund's Claim for Expenses Whenever Use of the Open Claims Formula Results in an Amount of Allocated Expenses that the Liquidator Deems "Unreasonable."

The Referee made findings that the Fund "has the choice to determine its allocation based

on the number of open claims," that some of the other state guaranty funds also have used the open claims method for allocating expenses to the Home insolvency without objection from the Liquidator, that in prior years the Liquidator had accepted the Fund's use of the "open claims" method for allocating expenses to the Home insolvency, that the Liquidator does not have the authority to require the Fund to open files using any certain method" under RSA Chapter 402-C that governs the Liquidator's actions, and that "the Fund may open as many claim files as it chooses." See Order at 5-6. Notwithstanding those findings, however, the Referee ruled that the Liquidator had the authority to disallow as "unreasonable" the Fund's claims for expenses in Claim Nos. 50 and 51. The Referee did not cite, and there is no case law or statutory authority to support her legal conclusion that the Liquidator may disallow the Fund's allocation of expenses to Home if the Liquidator deems such amounts "unreasonable." That legal conclusion should be reviewed by this Court. Furthermore, the Referee's Order should be reviewed to the extent it is based on factual findings which no reasonable person could have reached in view of the record evidence or which have no legal significance.

1. There is No Case Law or Statutory Authority to Support the Referee's Ruling That the Fund's Allocations of Expenses to Home for 2008 and 2009 May Be Rejected As Unreasonable.

Under Section 404-B:11 the Fund has a right to recover as a first priority against Home the expenses of the Fund in handling Home claims. The Liquidator does not dispute that it is proper to determine the amount of the Fund's expenses in handling Home claims by multiplying the amount of all of the Fund's expenses by a fraction the numerator of which is the number of the Fund's open files on Home claims and the denominator of which is the number of the Fund's open files on claims for all insolvencies (the open claims formula). Also, the Liquidator has not asserted that the expenses of the Fund (rent, employee costs, etc.) were not in fact incurred or that such expenses were somehow improper.

The Liquidator contends that the 80 Giant files cannot be counted as open files for purposes of applying the open claims formula because the result is unreasonable. Neither the Liquidator nor the Referee provided any statutory or other legal authority to support the Liquidator's assertion that the Liquidator has the right to decide, in the context of allocation of expenses to insolvent insurers, how many claims the Fund may properly treat as open claims with respect to demands for coverage under policies issued by insolvent insurers. Nor does the Liquidator offer any objective test or standard for determining whether in particular circumstances the Fund has acted improperly or in bad faith by opening a certain number of claims in response to demands for coverage received by the guaranty association. When reduced to its essence, the Liquidator's argument as accepted by the Referee is simply that the Liquidator's determination of "unreasonableness" is all that is required for the Liquidator to disallow allocations of expenses to Home in particular situations.

The Liquidator's argument and the Referee's decision must be rejected by this Court for several reasons. First, the Fund has a right to recover provided the expenses were incurred in handling Home claims. Specifically, RSA 404-B:11 provides that "[t]he expenses of the association...in handling claims shall be accorded the same priority as the liquidator's expenses." RSA 404-B:11 does not limit or qualify the expenses that are recoverable to only "reasonable" expenses. In contrast, RSA 402-C:44(I) specifies that the Liquidator's expenses of administration include "the actual and necessary costs of preserving or recovering the assets of the insurer; compensation for all services rendered in the liquidation; ... and reasonable attorney's fees." The Legislature in RSA 404-B:11 did not provide that the Fund may recover its "reasonable" expenses. If the Legislature had intended the recovery of only "reasonable" expenses, the statute would say so expressly. See Robertson v. Northern R.R., 63 N.H. 544, 547-549 (1886) ("Had the legislature intended that the party complaining should be limited in his

recovery to actual expenses or what might be found equitably due, or to some less sum than named in the statute, the intention would have been expressed…"). The Legislature provided that as long as the Fund's expenses were incurred in handling claims the Fund may recover.[1] Consequently, the Fund's allocation of expenses may only be rejected if it is a sham.

Second, the 80 files were not sham files and accordingly the allocated expenses were expenses incurred in handling claims and thus are recoverable at first priority. Under RSA 404-B:11 the Liquidator's authority to challenge the Fund's decision to treat particular claims as open claims in response to demands for coverage under policies of insolvent insurers is limited to situations where the evidence supports a finding that the Fund's action was a sham to shift the Fund's expenses of handling claims against other insolvent insurers to Home. If, for example, the evidence in this case were that the Fund created out of whole cloth multiple open claims under Home policies, not attributable to any underlying lawsuits or claims for damages presented to the Fund by a Home policyholder, then the Liquidator could disallow the Fund's claim for expenses as a sham to improperly shift expenses to Home, because in such circumstances such expenses would not be expenses incurred in handling Home claims. Quite clearly, as the undisputed facts in this case demonstrate, that is not what happened here.

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[1] Compare Mo. Rev. Stat. §375.1218 (at issue in the Huff case discussed infra at 21-22) which provides:

> The order of distribution of claims shall be: …
>
> > 2. Class 2. All claims under policies including such claims of the federal or any state or local government for losses incurred ("loss claims") including third party claims and all claims of a guaranty association or foreign guaranty association including *reasonable* allocated loss adjustment expenses…..*The liquidator shall have authority to inquire into the reasonableness of any allocated loss adjustment expenses claims* by a guaranty association or foreign guaranty association and such claim shall not be allowed if it is found to be unreasonable.

(Emphasis supplied).

In this case the Fund did not create multiple claim files out of whole cloth and without reference to any underlying lawsuit or liability claim or any demand for coverage under a policy issued by Home. It is undisputed that the Fund opened only one claim file under each Home policy as to each of the 40 demands for coverage that the Fund received from Western with respect to the 40 Giant lawsuits, each of which demands involved a separate alleged occurrence of MTBE pollution. See Surguine Aff. ¶7. The Fund did so because each of the Giant lawsuits represented an unpaid claim, and could therefore constitute a covered claim under the Fund's enabling act, and because each lawsuit potentially triggered separate coverage under each of the Home policies. See Surguine Aff. ¶8. The Fund maintained 80 claims for the Giant lawsuits in accordance with the Fund's standard procedures for opening one claim for each incident or occurrence with regard to which a demand for coverage is made (and if a demand for coverage could trigger coverage under more than one policy issued by the insolvent insurer, then a separate claim is opened as to each policy, as each policy requires a separate evaluation by the Fund of coverage, declarations, conditions and endorsements). See Surguine Aff. ¶ 6. Consequently, the number of claims that the Fund maintained was based on the 40 actual demands for coverage from Western with respect to the Giant lawsuits. The Fund did not fabricate claims to increase its claim against Home.

Moreover, it is undisputed that each of the 40 Giant lawsuits involve different plaintiffs (municipalities, water districts, school boards, and counties, among others), different properties located in many states, and different time periods during which the environmental pollution allegedly occurred. See Fund's Submission at App. 1, Ex. E. Each of the 40 Giant lawsuits presented a separate source of potential liability of the policyholder and a separate source of potential liability of the Fund for coverage under the Home policies, and each lawsuit was individually reviewed, evaluated and handled by the Fund as a separate claim. See Surguine Aff.

¶ 8. The position advanced by the Liquidator and accepted by the Referee in her decision—that the Liquidator can second-guess and reject the Fund's treatment of the Giant Claims as 80 open claims and thereby reject the Fund's claim for expenses—has no basis in law.

In summary, there is no legal justification for disallowing the Fund's allocated expenses because they are "unreasonable" in amount. The only case which the Liquidator has cited to support his disallowance, Huff v. The Integral Insurance Co., 354 S.W.3d 228, 2011 Mo.App. LEXIS 1441 (Mo. Cir. Ct. 2011), is easily distinguished. In Huff the liquidator was not challenging the Fund's decision to open multiple claims and then allocate its expenses to an insolvent insurer on such basis. In Huff the Fund opened one claim under one insolvent policy in response to the policyholder's demand for coverage with respect to one property damage claim made against the policyholder, and asserted that the Fund incurred $16,720 in general administrative expenses in paying that single claim. Importantly, unlike RSA 404-B:11, the Missouri statute at issue in Huff did not authorize guaranty associations to recover general administrative expenses from insolvent estates, and the court ruled that the Fund's claim in Huff for administrative expenses was properly rejected on that basis. Here, the Liquidator does not contend that the type of expenses for which the Fund seeks recovery are not recoverable. Furthermore, the Huff court ruled in the alternative that the Fund's claim for $16,720 of administrative expenses lacked "validity" because it was not credible based on the "substantial evidence" presented by the liquidator in that proceeding which showed that the property damage claim at issue "would have taken approximately one hour to have administered." 354 S.W.3d at 233. In stark contrast to Huff, the Liquidator here did not present any competent evidence to support his conclusory allegation that the Fund made minimal "actual efforts" in handling and resolving the Giant Claims, and such conclusion is contradicted by the undisputed evidence submitted by the Fund. The Liquidator failed to offer any affidavits or documentary evidence to

dispute the Fund's proof, as referenced in the Surguine and Draftz affidavits which show the Fund's claims-handling efforts in 2008 and 2009 with respect to the Giant Claims. Huff was decided under a statute different than RSA 404-B:11 and under entirely different facts. Huff does not support the Referee's conclusion that the Liquidator may disallow as "unreasonable" the Fund's allocations of expenses to Home.

2. The Referee's Ruling That "Substantial Time" Must Be Spent in Handling a Claim for the Claim to Be Counted for Allocation Purposes Is Arbitrary and Improper Because It Imposes on the Fund Through the Backdoor A "Time Spent" Method of Allocation.

The Referee's determination that "substantial time" must be spent in handling a claim for the claim to be counted for allocation purposes under the open claims method of allocation is improper because it imposes on the Fund through the back door a "time spent" method of allocation which is contrary to the accepted open claims method of allocation. The Liquidator has admitted that the Fund is not required to substantiate its allocation of expenses based on time spent on each claim—the Liquidator has accepted the open claims allocation methodology. The open claims allocation method assumes that each open claim is treated equally irrespective of the amount of time spent on each claim. The only basis for excluding a claim from being treated as an open claim is if maintenance of the claim as an open claim is a sham. Absent a sham claim, time spent is irrelevant. For example, time spent on a minor slip and fall claim seeking $1,000 might be quite limited and a tiny fraction of time spent on a major environmental damage claim. Under the open claim allocation methodology each of such claims is treated equally irrespective of the small amount of time spent on the slip and fall claim. The Liquidator's attempt to impose a requirement that substantial time be spent on a claim in order for the claim to be counted under the open claim allocation method is not permitted by RSA 404-B:11 and is contrary to the Liquidator's acceptance of the open claim method of allocation.

Moreover, the Referee's "substantial time" test is arbitrary because the Referee has not set forth any standard or measure of how much time must be spent in handling a claim for it to be deemed "substantial" and thus qualify to be counted in the allocation formula. That test leaves the determination of the "unreasonableness" of expense allocations to the *ipse dixit* of the Liquidator and the Referee.

3. The Referee's Ruling That the Fund's Allocations of Expenses to Home for 2008 and 2009 Were Unreasonable is Based on Determinations Which No Reasonable Person Could Have Reached In View of the Record Evidence or Which Are of No Legal Significance.

Even assuming *arguendo* that the Referee did not err in concluding that the Liquidator has legal authority to disallow as "unreasonable" amounts claimed for allocated expenses, her ruling should be reviewed because it is based on three determinations which no reasonable person could have reached in view of the record evidence or which are of no legal significance.

First, no reasonable person could have determined based on the record evidence that the Fund did not spend "substantial" time in handling the Giant Claims, as the Referee so found. It is undisputed that in February 2008 the Fund received written notices from Western of 40 lawsuits filed against Giant for which Western was demanding coverage under the Home Policies. See Surguine Aff. ¶ 7. Those 40 lawsuits were filed in a number of jurisdictions and each of the 40 suits involved separate alleged occurrences of MTBE pollution. On or about March 4, 2008, the Fund opened 80 claim files, 40 claims under each of the two Home Policies, because each lawsuit represented an unpaid claim, and could therefore constitute a covered claim under the Fund's enabling act, A.R.S. §§ 20-661 through 20-680, and because each lawsuit potentially triggered coverage under each of the Home Policies. See Surguine Aff. ¶ 8. These claims remained open until 2009. See Surguine Aff. ¶ 17.

John Draftz, the Fund's Senior Claims Adjuster at the time, reviewed each of the

complaints against Giant as they were submitted by Giant to the Fund, and he reviewed policy information from the Liquidator including information concerning any pollution exclusion clause. See Surguine Aff. ¶ 9 and Ex. I; Draftz Aff. ¶ 3. The Fund devoted effort in reviewing the policy information that was then available and considering policy defenses on an individualized basis as to each of the Giant Claims. Draftz Aff. ¶ 3.

The Fund's notes for each of the 80 claim files reflect that the Fund reviewed the allegations of each Giant Claim and that, in addition to noting the late notice/time bar defense, the Fund referenced with respect to each Giant Claim the various other defenses to general liability coverage which could be implicated by the Claims, including but not limited to other insurance, "punitives, fraud, known hazard, etc." See Draft Aff. ¶ 6 and Exhibits 1 through 80 thereto. Although the claim file notes describing the Fund's work on the files are similar in some respect for each of the Giant Claims, the file notes differ based on the varying allegations in the lawsuits concerning the plaintiffs involved, the causes of action asserted, and the type and amount of relief requested. See Draftz Aff. ¶ 7.

Consequently, as reflected in Fund's file notes for the Giant Claims and in Mr. Draftz's affidavit concerning his work, the Fund conducted individualized review and coverage analysis for each and every one of the Giant Claims before the Fund issued its letters with respect to the Giant Claims on March 5, 7, 10, 11, 12 and 14, 2008. See Draftz Aff. ¶ 8. In those letters, the text of which is set forth in the file notes for each of the Giant Claims, the Fund informed the insured both that the Fund was denying coverage based on the bar date established by the Home Liquidation Order and that the Fund was also reserving "all statutory and/or policy defenses it may have in connection with [the Giant Claims, whether stated or not in this letter." See Draftz Aff. ¶ 5. That review and coverage analysis was in addition to the review and analysis that the Fund later conducted, with the assistance of the Fund's coverage counsel Ryan Talamante, in

April and May 2008 after the Giant coverage action had been brought and after the Fund had received from the Liquidator additional information regarding the Home Policies. See Draftz Aff. ¶ 8.

Moreover, the Referee's factual finding of insubstantial time is based on a false assumption, unsupported by any evidence, that all of the work done by the Fund on each file is reflected in the claim notes. The number of pages of each claim file, and the fact that no entries were made for a number of months as a matter of law is not a sufficient basis on which to conclude that such files should be disregarded for purposes of allocating expenses. Further, such conclusion is contrary to the undisputed testimony of the Fund's Executive Director and Claims Manager that was submitted in this proceeding. See Surguine Aff. ¶ 10; Draftz Aff. ¶ ¶ 5-8. The Referee's "substantial time" test ignores the fact that experienced claims handlers like Mr. Draftz exercise substantial and efficient expertise in reviewing pleadings and policy information and formulating coverage positions with respect to claims, and that the full value and extent of such effort is not entirely reflected in the notes as they appear in the claim file. Based on these undisputed facts and documentary evidence, no reasonable person could have determined that the Fund "did not spend 'substantial' time on these files..." [2]

The Referee's second determination—that applying the formula using 80 files for the Giant Claims is unreasonable because it results in a greater amount and percentage of the Fund's expenses being allocated to Home compared to prior years —has no legal significance and

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[2] An illustration of how the claim notes can be misused under the Referee's "substantial time" test is the Liquidator's statement at page 4 of his Sur-Reply memorandum that, based on one entry in the claim notes for April 29, 2008, the Fund spent a total of "less than 3 ½ hours" on coverage issues for the Giant Claims and addressed them "only at a high level for all of the matters combined." In making this incorrect assertion, the Liquidator turned a blind eye to the Fund's extensive claims handling efforts in February and March 2008 as reflected in the notes for each of the 80 Giant claim files and the correspondence between the Fund and Western regarding those claims.

cannot constitute a basis on which to deny the Fund's claim. The fact that allocated expenses were greater for Home in amount and percentage than in previous years is not a legitimate basis on which to declare the Fund's allocations "unreasonable." Different results do not *ipso facto* mean that the results are unreasonable.

The dollar amount allocated to Home and Home's relative share of the Fund's expenses are driven by the Home's relative share of the Fund's open files. The Referee did not find, and the Liquidator did not assert, that the amounts paid by the Fund for the components of the Fund's operational expenses (rent, employee costs, etc.) are not appropriate, and thus the overall dollar amount of the Fund's operational expenses is not challenged. The fact that use of the open claims methodology to allocate expenses results in the dollar amount claimed by the Fund for Home, and is greater than the amount allocated to other insolvent insurers, cannot justify a conclusion that the amount claimed by the Fund is unreasonable. The Fund's facilities and staff are maintained as a safety net to handle claims of claimants and policyholders when an insurer insolvency occurs. New Hampshire law provides that the Fund may recover the expenses of such safety net as a first priority claim. The Liquidator's argument that Home's share of such safety net expense for 2008 and 2009 is too great and should be borne by other insolvent estates should have been rejected by the Referee.

Moreover, comparing the amount and percentages of the Fund's operating expenses allocated to Home in 2008 and 2009 to the amount and percentages in other years is irrelevant because the allocation of expenses in each year is purely a function of the number of claims open during the year. The mere fact that the Fund's allocations to Home for 2008 and 2009 amounted to 40% of the costs of keeping the Fund in operation for two years is of no moment when viewed in light of the decline of the total number of other claims being handled by the Fund during the time period at issue. See Attachment E at Ex. 11. Obviously, as the number of open claims for

other insolvent insurers declines, a higher percentage of the Fund's operational expenses must *per force* be allocated to Home with respect to open claims under the Home policies. For example, if in 2008 and 2009 the Fund did not handle any claims for other insolvent insurers, the Fund would have allocated 100% of its operating expenses to Home based on the Giant Claims alone. There would be nothing improper in that result.

Similarly without legal significance is the Referee's third determination that the Fund's allocations of expenses to Home in 2008 and 2009 are unreasonable because they were 40% of the Fund's total operating expenses when the costs incurred by the Fund in defending the coverage action involving the Giant Claims were "limited to $28,817.38." This apples to oranges comparison is specious because the Referee ignores the fact that defending the coverage action is just one of several activities in which the Fund engaged to fulfill its statutory duty to investigate, analyze coverage defenses, and evaluate the Giant Claims for resolution. The Referee also fails to take into account that the costs of defending the coverage action were limited because the Fund avoided additional defense expense when the Fund and Western agreed to put the coverage action on hold to permit Western to satisfy its claim by recovering from another insurer. See Order at 4.

The Referee's decision to uphold the Liquidator's disallowance with respect to Claim No. 50 should be reviewed and rejected because the Liquidator did not meet his burden of showing a sufficient basis on which to disallow the Fund's claim. See Auerbach, supra (Superintendent of Insurance who is responsible for providing an economical liquidation of insolvent insurance companies failed to satisfy his burden of demonstrating a sufficient basis for disclaiming coverage for claim). Even if the Liquidator does not have such burden, the Referee's decision should be reviewed and rejected because the evidence shows that the expenses for which the

Fund seeks priority here are expenses in handling claims and are thus recoverable under RSA 404-B:11.

C. This Court Should Recommit, Review and Reject That Part of the Referee's Order Regarding Claim No. 51 Which Upheld the Liquidator's Classification of All of the NCGIF Dues Paid by the Fund as a Class V "Residual" Claim.

In her Order with respect to Claim No. 51 the Referee upheld the Liquidator's classification of all of the NCIGF dues paid by the Fund as a Class V "residual claim" (for which the Referee concedes there will not be a distribution from the estate), rather than a first-priority Class I claim for expenses in claims pursuant to RSA 404B:11. This part of her Order should be reviewed and rejected as well for two reasons.

First, the Referee erred as a matter of law in concluding that the Fund, and not the Liquidator, has the burden of proving that all of the NCIGF dues allocated by the Fund allocated to Home are related to claims handling and should be classified as Class I claims. See Auerbach, supra. The Referee should have ruled that the Liquidator has the burden of establishing that that the Fund's claim for NCIGF dues is a Class V claim.

Even assuming *arguendo* that the Fund has the burden of proof on this issue, the Fund has met its burden based on the Referee's express finding that "the Fund has demonstrated that [NCIGF's] activities assist [the Fund's] personnel in handling claims," see Order at 7, and on the undisputed testimony submitted by the Fund from the NCIGF's Assistant Vice President that shows that the primary function of the NCIGF is to assist guaranty funds, including the Fund, in fulfilling their responsibilities in handling claims, and that the NCIGF dues paid by members like the Fund are all of one piece as the NCIGF has not established two categories of dues—dues relating to claims handling activities and dues relating to its other functions. See Steckbeck Aff. ¶¶ 3-7.

The NCIGF dues paid by the Fund and allocated to Home should have been classified as a first priority Class I claim in accordance with RSA 402-C:44 and 404-B:11 because the Fund has received substantial assistance in handling Home claims on account of the Fund's membership in the NCIGF and because the NCIGF dues are all of one piece and are not differentiated between dues relating to claims activities and dues relating to other activities and, thus, cannot be segregated out by the Fund. Supra at 14-15. The Referee's decision ignores the Fund's argument that the NCIGF dues are all of one piece and the undisputed evidence that the primary function of the NCIGF is to assist the Fund in handling claims and that the NCIGF provides substantial assistance to the Fund in handling claims. The NCIGF dues should be classified as a Class I claim. The Referee's Order should be reviewed and rejected because it is not supported by applicable law and is contrary to the facts as set forth in the affidavits and exhibits submitted by the Fund.

CONCLUSION

For the foregoing reasons the Fund asserts that, in upholding the Liquidator's disallowances in Claim Nos. 50 and 51, the Referee erred as a matter of law and made factual determinations which no reasonable person could have reached in view of the record evidence or which have no legal significance. The Fund respectfully requests that this Court: (a) grant this Motion to Recommit; (b) review and reject the legal rulings and findings by the Referee set forth in the Referee's December 20, 2012 Order on the Merits; and (c) vacate the Referee's December 20, 2012 Order on the Merits. The Fund also requests that this Court grant a full hearing and oral argument on this Motion.

Respectfully submitted,

ARIZONA PROPERTY AND CASUALTY INSURANCE GUARANTY FUND

By its attorneys,

January 18, 2013

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CERTIFICATE OF SERVICE

I hereby certify that, on this 18th day of January 2013, the foregoing and all attachments hereto were served by e-mail and first class mail on counsel for Roger A. Sevigny, Insurance Commissioner, as Liquidator of the Home Insurance Company, and by first class mail on the Liquidation Clerk for The Home Insurance Company in Liquidation:

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