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THE STATE OF NEW HAMPSHIRE
SUPREME COURT

JULY 2004 SESSION

No. 2004-0319

**In the Matter of the Liquidation of
The Home Insurance Company**

**MOTION OF THE NATIONAL CONFERENCE OF INSURANCE
GUARANTY FUNDS FOR LEAVE TO FILE AN AMICUS CURIAE BRIEF**

The National Conference of Insurance Guaranty Funds ("NCIGF"), by its counsel, Wiggin & Nourie, P.A., moves this Court pursuant to Rule 30 for an order granting NCIGF leave to file the attached amicus curiae brief in support of the Commissioner of Insurance as Liquidator of The Home Insurance Company. In support of this motion, NCIGF states as follows:

1. NCIGF is a non-profit corporation whose members include the property and casualty insurance guaranty funds and associations in all 50 states, the District of Columbia, Puerto Rico and the Virgin Islands (the "Guaranty Funds"). NCIGF's interest in this matter arises from the fact that all Guaranty Funds in the United States were triggered by the insolvency of The Home Insurance Company ("Home") and are paying claims on behalf of Home policyholders and claimants. The Guaranty Funds have already paid out \$36 million in claims and their total estimated liabilities are projected at \$1 billion. Collectively, the Guaranty Funds will be the single largest policyholder level creditors in the Home estate.

2. Appellants the ACE Companies and Benjamin Moore & Company ("Benjamin Moore") are appealing the April 29, 2004 Order of the Merrimack County Superior Court, which granted the Home Liquidator's Motion for Approval of Agreement and Compromise with the

AFIA Cedents. The Liquidator's Agreement with the AFIA Cedents will allow the Liquidator to recover a significant amount of reinsurance proceeds from the ACE Companies, which will directly benefit the policyholder level creditors, *including Benjamin Moore* and the Guaranty Funds, by increasing the assets available for distribution.

3. ACE and Benjamin Moore have refused to give their consent to the filing of an amicus curiae brief by NCIGF for the following reasons stated in an e-mail dated July 1, 2004 to counsel:

[T]he insurance guaranty funds with an interest in the Home case had an opportunity to participate in these proceedings but apparently chose not to do so. As such, it would be unfair to allow them to participate in the appeal at this time under the auspices of an NCIGF amicus brief. In addition, the Liquidator's Motion in the New Hampshire Superior Court stated that [sic] gave the agreement with the AFIA cedents to the NCIGF reinsurance commutation subcommittee on the Home in Liquidation prior to filing, and the Superior Court refers to the absence of any objection from the subcommittee in its decision. For these reasons, and considering the fact that the NAIC will already be filing an amicus brief in support of the Liquidator's position (with our client's consent), Benjamin Moore [and the ACE Companies] will not consent to your request.

4. The only other policyholder level creditor in this dispute is appellant Benjamin Moore, which vigorously objects to the Liquidator's Agreement with the AFIA Cedents. Benjamin Moore does not adequately or accurately represent the interests of the Guaranty Funds or the remainder of the policyholder claimants against the Home estate. The NCIGF amicus brief will put into context the significant beneficial effect the Liquidator's proposed Agreement will have on all Class II policyholder level creditors under the distribution scheme in RSA 402-C:44 of New Hampshire's Insurers Rehabilitation and Liquidation Act, RSA 402-C.

5. The objections of Benjamin Moore and the ACE Companies to the NCIGF filing an amicus brief are not credible. First, putting "fairness" aside, the NCIGF Home Reinsurance

Commutation Subcommittee is referenced in the Superior Court Order and the Liquidator's Motion, but without any explanation of who NCIGF's members are, what role the Guaranty Funds have in the Home Liquidation and the significant claim the Guaranty Funds have as Class II creditors in the Home estate. Second, the National Association of Insurance Commissioner's amicus brief in support of the Liquidator, to which both Benjamin Moore and the ACE Companies have consented, does not address the Guaranty Funds or take into account the very different roles that insurance commissioners and the Guaranty Funds have in an insurance company insolvency, principally that the Guaranty Funds pay claims of policyholders and creditors and are to be reimbursed from assets collected by the Liquidator in the estate.

6. Attached to this Motion is NCIGF's proposed Amicus Curiae Brief.

WHEREFORE, NCIGF respectfully requests that this Honorable Court:

- A. Grant the relief requested in this Motion and accept NCIGF's attached Amicus Curiae Brief; and
- B. Grant such other relief as the Court deems just and equitable.

Respectfully submitted,

NATIONAL CONFERENCE OF INSURANCE
GUARANTY FUNDS

By its attorneys,

WIGGIN & NOURIE, P.A.



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July 7, 2004

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Motion has been mailed this date to the following persons, via First Class U.S. Mail:

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