

**THE STATE OF NEW HAMPSHIRE
SUPREME COURT**

No. 2005-0740

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

**LIQUIDATOR’S OBJECTION TO REINSURANCE ASSOCIATION OF
AMERICA’S MOTION TO FILE REPLY BRIEF AS AMICUS CURIAE**

Roger A. Sevigny, Commissioner of Insurance of the State of New Hampshire, as Liquidator (“Liquidator”) of The Home Insurance Company (“Home”), hereby objects to the motion of the Reinsurance Association of America (“RAA”) to file a reply brief as amicus curiae. As reasons therefor, the Liquidator states:

1. The RAA’s proposed amicus brief in reply is untimely. Supreme Court Rule 30(1) provides that “[a]n amicus curiae shall file a brief within the time allowed to the party whose position the amicus will support, unless the court for good cause shown shall grant leave for later filing.” The rule plainly contemplates that an amicus brief is to be filed with the brief of the party it supports, not the party’s reply brief. See Supreme Court Rule 16(4) and (5) (distinguishing briefs from reply briefs). This makes sense because responses to a reply brief “shall not ordinarily be allowed” and may be filed only “by permission of the court received in advance.” Supreme Court Rule 16(7). It is unfair and inconsistent with orderly proceedings for an amicus to file its brief when the party it opposes has no right of reply.

2. There is no good cause for the RAA to file an amicus brief at this late date. The RAA asserts that this matter has “direct ramifications” that led it to file an amicus brief in support of the ACE Companies and Benjamin Moore & Co. in the first appeal (No. 2004-0319). Motion ¶¶ 2-3. The RAA’s amicus brief in that appeal, however, was properly filed at the same

time as the briefs of the parties it supported. It was not a reply brief. The same alleged ramifications do not support the late filing of an amicus brief here.

3. The RAA also asserts that the Liquidator and amicus National Association of Insurance Commissioners (“NAIC”) have raised a “new issue” not addressed below by referring to the Insurer Receivership Model Act (“IRMA”). Motion ¶ 4. This is not a new issue. The lower level NAIC proceedings concerning IRMA were raised during the evidentiary hearing by ACE (the party supported by the RAA). As the Superior Court stated in the Approval Order, ACE’s witness Mr. Craig “took issue with the pending agreement, testifying that these very issues had been the subject of recent discussions within a drafting group at the NAIC charged with updating the Model Receivership Act.” J.A. 52. “Only on cross-examination did Mr. Craig acknowledge that the current draft recently approved by the NAIC intermediate levels[] included a drafting note” that “completely undermined” ACE’s evidence. Id. If the RAA believed that IRMA and the drafting note were important, it should have filed a timely amicus brief. In any event, it is odd for the RAA to dispute the substance of the regulatory position taken by the NAIC in the IRMA drafting note by reference to the underlying NAIC process. Motion ¶ 5. The RAA’s erroneous view of the lower-level NAIC process is not a better source for the regulatory position taken by the States’ insurance commissioners than IRMA and the NAIC itself.

4. The RAA only devotes a bit over two pages of its amicus brief to this purportedly new issue. RAA Br. 2-4. The bulk of the brief contends, in the words of the RAA’s argument heading, that the Liquidator has “inappropriately interpreted his authority pursuant to the New Hampshire Liquidation Act.” Id. 4-8. The RAA articulates no reason to have delayed submitting an amicus brief on that issue.

5. Part of the RAA's argument concerning the Liquidator's authority is that the Agreement "improperly alters the terms of ACE's reinsurance agreements." RAA Br. 6-8. Neither ACE nor BMC has raised this issue. See ACE Br. 1; BMC Br. 1. It accordingly exceeds the proper role of an amicus, who is "bound by the issues presented by the parties." Thomas Tool Servs. v. Town of Croydon, 145 N.H. 218, 221 (2000)(quoting Appeal of Town of Hampton Falls, 126 N.H. 805, 814 (1985)). The Court has previously struck portions of an amicus brief that raised new issues. See Verizon New Eng., Inc. v. City of Rochester, 151 N.H. 263, 272-3 (2004) (striking portion of an amicus brief that set forth preemption argument because the court has "consistently held that we will not consider issues raised on appeal that were not presented in the trial court"). It should not allow the late filing of such a brief here.

WHEREFORE, the RAA's motion should be denied.

Respectfully submitted,

ROGER A. SEVIGNY, COMMISSIONER OF
INSURANCE OF THE STATE OF NEW HAMPSHIRE
SOLELY AS LIQUIDATOR OF THE HOME
INSURANCE COMPANY,

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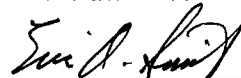


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March 9, 2006

Certificate of Service

I hereby certify that a copy of the foregoing Liquidator's Objection to Reinsurance Association of America's Motion to File Reply Brief as Amicus Curiae was sent, this 9th day of March, 2006, by first class mail, postage prepaid, to counsel on the attached service list.



Eric A. Smith

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