

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 THE REINSURANCE ASSOCIATION OF  
AMERICA'S MOTION FOR REHEARING AND RECONSIDERATION

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 for rehearing and reconsideration filed by amicus Reinsurance Association of America ("RAA"). As reasons therefor, the Liquidator states:

1. As an initial matter, the RAA lacks standing to file a motion for rehearing and reconsideration. The RAA is not a party to this appeal. It is merely an interested person granted leave to file an amicus brief. An amicus is not entitled to seek substantive relief. Cf. Verizon New Eng., Inc. v. City of Rochester, 151 N.H. 263, 272-3 (2004) (amicus may not raise issue not presented to the trial court); Thomas Tool Scrvs. v. Town of Croydon, 145 N.H. 218, 221 (2000) (amicus is "bound by the issues presented by the parties"). To hold otherwise would be to treat an amicus as a party litigant without regard to whether it has "suffered a legal injury against which the law was designed to protect." Asmussen v. Commissioner, N.H. Dep't of Safety, 145 N.H. 578, 587 (2000). The RAA has not, and its motion should be denied for lack of standing.

2. In any event, the RAA fails to meet the applicable standard. A motion for rehearing or reconsideration must "state with particularity the point of law or fact that in the professional judgment of the movant the court has overlooked or misapprehended." Supreme Court Rule 22(2). The Court did not overlook or misapprehend the points raised by the RAA. The Court addressed and rejected them. The RAA's motion is merely reargument.

3. The RAA first contends that the Court did not address asserted “facts” presented in the RAA’s amicus brief (RAA Motion ¶ 1) concerning the effect of approving the agreement on future liquidations. The Court, however, expressly noted that ACE and BMC asserted that “allowing a deviation . . . would open the door to similar agreements with other creditors or attempts by creditors to enhance their priority.” Opinion at 7. The Court then evaluated those arguments and disagreed. *Id.* at 10. The Court concluded that “[s]ince the liquidator’s actions are closely supervised by the court, there is little risk that the priority provisions of RSA 402-C:44 will be violated.” *Id.* Further, without the agreement, the reinsurer here would “reap a substantial windfall” and Home’s creditors would be deprived of amounts the reinsurer “would have paid but for Home’s insolvency.” *Id.* at 16. “This would frustrate the legislative purpose of obtaining full payment from reinsurers despite an insurer’s insolvency.” *Id.* In assessing the credibility of the RAA’s predictions, the Court could also have considered that the national association of the guaranty funds who collectively are the largest policyholder-level creditors in property/casualty insurer liquidations (the National Conference of Insurance Guaranty Funds) and the national body of insurance regulators (the National Association of Insurance Commissioners) submitted amicus briefs supporting the Liquidator. The RAA recasts its prior arguments in an effort to obtain a reinsurer windfall, but the Court has already considered them.

4. The RAA finally contends that the Court overlooked “facts” presented by the RAA in its amicus brief concerning the Insurer Receivership Model Act (“IRMA”) and the drafting note to IRMA § 801. RAA Motion ¶ 4. However, in its decision the Court reviewed the history of IRMA and the Model Act’s relation to the New Hampshire statutes, Opinion at 9, and it expressly noted the “similarities” between IRMA and the New Hampshire statute. *Id.* at 10. The RAA is simply reiterating its request that the Court ignore (a) the plain language of the

drafting note regarding the Liquidator's implicit powers, and (b) the inclusion of the note in IRMA § 801 as approved in plenary session of the NAIC. See 1 Proc. of the Nat'l Ass'n of Ins. Comm'rs 32, 113 (4<sup>th</sup> Quarter 2005). Indeed, the NAIC itself submitted an amicus brief on these points (see NAIC Amicus Br. at 4-11, especially at 6: "The drafting note, in addressing an IRMA provision similar to that in the New Hampshire Act, makes clear that the Liquidator has the implicit authority to make the type of administrative payment at issue in this case."), and the Court addressed them in its decision. Opinion at 9-10.<sup>1</sup>

5. In sum, the RAA lacks standing, and it merely seeks reargument of points already considered. Nothing presented warrants rehearing or reconsideration under Rule 22.

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<sup>1</sup> The RAA's position is particularly ironic as the drafting note was first raised by the ACE Companies. As the Superior Court noted, 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." Joint Appendix at 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 the Superior Court found "completely undermined" ACE's evidence. Id. See Tr. V 112-114. The drafting note has now been adopted by the NAIC as part of IRMA.

WHEREFORE, the RAA's motion should be denied.

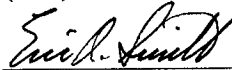
Respectfully submitted,

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

By his attorneys,

KELLY A. AYOTTE  
ATTORNEY GENERAL

J. Christopher Marshall  
Civil Bureau  
New Hampshire Department of Justice  
33 Capitol Street  
Concord, NH 03301-6397  
(603) 271-3650



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J. David Leslie  
Eric A. Smith  
Rackemann, Sawyer & Brewster  
One Financial Center  
Boston, MA 02111  
(617) 542-2300

December 21, 2006

Certificate of Service

I hereby certify that a copy of the foregoing Liquidator's Objection to the RAA's Motion for Rehearing and Reconsideration was sent, this 21st day of December, 2006, by first class mail, postage prepaid, to counsel on the attached service list.

  
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Eric A. Smith

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**SERVICE LIST**

Ronald L. Snow, Esq.  
Lisa Snow Wade, Esq.  
Orr & Reno  
One Eagle Square  
P.O. Box 3550  
Concord, New Hampshire 03302-3550

Gary Lee, Esq.  
Pieter Van Tol, Esq.  
Lovells  
590 Madison Avenue  
New York, New York 10022

Andre Bouffard, Esq.  
Eric D. Jones, Esq.  
Downs Rachlin Martin PLLC  
199 Main Street  
P.O. Box 190  
Burlington, Vermont 05402-0190

Susan Sahakian, Esq.  
Dykema Gossett PLLC  
400 Renaissance Center  
Detroit, Michigan 48243-1668

Doreen F. Connor, Esq.  
Wiggin & Nourie  
670 North Commercial Street  
Suite 305  
P.O. Box 808  
Manchester, New Hampshire 03105-0808

Rebecca McElduff, Esq.  
NAIC  
Legal Division  
2301 McGee Street, Suite 800  
Kansas City, Missouri 64108

Bruce A. Harwood, Esq.  
Sheehan Phinney Bass & Green  
1000 Elm Street  
Manchester, New Hampshire 03105-3701

Tracey W. Laws  
Matthew T. Wulf  
Reinsurance Association of America  
1301 Pennsylvania Avenue, N.W. #900  
Washington, DC 20004