THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS. SUPERIOR COURT

BEFORE THE COURT-APPOINTED REFEREE
IN RE THE LIQUIDATION OF THE HOME INSURANCE COMPANY
DISPUTED CLAIMS DOCKET

In Re Liquidator Number:	**2011-HICIL-50** **2011-HICIL-51**
Proof of Claim Number:	**GOVT18901-11** **GOVT18901-12**
Claimant Name:	**Arizona Property and Casualty Insurance Guaranty Fund**

REPLY MEMORANDUM OF CLAIMANT ARIZONA PROPERTY AND CASUALTY INSURANCE GUARANTY FUND

Pursuant to Section 15 of the Restated and Revised Order Establishing Procedures Regarding Claims Filed With the Home Insurance Company In Liquidation, Claimant Arizona Property and Casualty Insurance Guaranty Fund (the "Fund") submits this reply memorandum in further support of the Fund's position with respect to the two above-referenced claims. For the reasons set forth in the Fund's submissions, the Liquidator's decisions to disallow $359,851.68 of the Fund's claimed administrative expenses allocated to Home, and to classify all of the NCIGF dues paid by the Fund as a Class V claim, are wholly without merit and are not reasonably warranted by the undisputed facts set forth in the affidavits and exhibits submitted in these proceeding. Consequently, the Fund's claims in these proceedings should be allowed in the total amount of <u>$446,838.25</u> as Class I claims under RSA §§ 402-C:44 and 404-B:11.

ARGUMENT

A. The Liquidator's Disallowance of the Fund's Claim for Expenses Is Unwarranted and Should Be Rejected Because the Fund's Allocation of Expenses to Home for 2008 and 2009 Was in Accordance with the "Open-Claims" Methodology That the Liquidator Has Accepted, and the Evidence Does Not Show that the Fund's Decision to Open 80 Files for the Giant Lawsuits Was a Ruse or a Sham Or Done for An Improper Purpose To Shift the Fund's Expenses from Other Insolvent Insurers to Home.

1. The Liquidator Admits that the Fund's Use of an "Open-Claims" Methodology to Allocate Expenses to Home Is Proper.

Significantly, the Liquidator admits in his submission that it has been proper for the Fund to use the "open claims" methodology to allocate a portion of the Fund's overall administrative expenses to Home. See Liquidator's Submission at 1, 16. Although the Liquidator points out that some guaranty funds allocate their expenses to Home based on actual time spent on handling particular claims, the Liquidator expressly acknowledges that a number of guaranty associations allocate expenses to Home and other insolvent insurers based on the number of open claims, just as the Fund has done in this case. See Liquidator's Submission at Ex. 11. The Liquidator does not argue that the "open-claims" method is *per se* invalid and may not be used by guaranty associations as the basis on which to allocate administrative expenses, including overhead expenses, to Home.

Moreover, the Liquidator admits in his submission that he has "accepted most categories of guaranty association expenses as related to claims handling." Indeed, the Liquidator has accepted all categories of such expenses (accounting, legal, administrative, miscellaneous office expenses, travel, postage, rent, telephone) that the Fund has submitted for payment in this matter, with the limited exception of the NCIGF dues (all of which dues the Liquidator is arguing should

be presumed unrelated to claims handling). See Liquidator's Submission at 16.[1] Importantly, the Liquidator concedes that the Fund's use of the "open-claims" allocation methodology was proper with respect the Fund's allocation of its expenses to Home for several years (2003 through 2006, 2007, and 2010). See Liquidator's Submission, Exhibit 3 at p.3. Thus, the Liquidator is not challenging in this proceeding the propriety of use of an "open-claims" methodology for allocating the Fund's expenses to the Home.

2. The Liquidator May Not Eliminate 78 of the Fund's Open Claims In Determining Home's Share of Administrative Expenses In the Absence of Evidence Establishing that the Fund's Treatment of the Giant ClaimsWas A Sham or Ruse.

Rather, what the Liquidator is challenging and second-guessing in this matter is the Fund's operational decision to open eighty (80) claims with respect to the forty (40) groundwater pollution lawsuits that were filed against Giant in various jurisdictions throughout the United States by many plaintiffs with respect to many properties, one claim being opened by the Fund for each lawsuit as to each of the Home policies potentially applicable to each such lawsuit.

The linchpin of the Liquidator's argument in this proceeding is that it was somehow "unreasonable" for the Fund to open 80 claims as a result of the 40 demands from the

[1] In his submission the Liquidator states for the first time in this proceeding that guaranty associations do not have a right under the New Hampshire Insurance Guaranty Association Act (NHIGA) to "have the entirety of [their] overhead expenses paid by the estates of insolvent insurers as Class I administrative costs." See Liquidator's Submission at 14. Significantly, the Liquidator did not take this position in the Notices of Partial Determination that he issued in this proceeding or in his letters of December 2009 and May 2011 which are referenced in those Notices. Furthermore, the Liquidator admits that it is not appropriate for the Liquidator to "parse," draw fine distinctions or track individual expenses allocated to Home by guaranty associations in order to determine whether certain categories of expenses are related to claims handling. See Liquidator's Submission at 15. In any event, the Liquidator's statements about the terms and purpose of the NHIGA, including its citation to Pandora Indus. V. Department of Revenue Admin,. 118 N.H. 891 (1978), are superfluous and have no relevance because in this proceeding the Liquidator admits that the Fund is entitled to allocate the Fund's administrative expenses to Home and have them paid by the Liquidator as Class I expenses; the only issue in dispute is what amount of administrative expenses are properly allocated to Home. Moreover, the Pandora case is distinguishable because the tax statute at issue in that case referenced three specific factors that were to be weighed in allocating revenue earned by taxpayers "between New Hampshire and other states for the purpose of measuring the business profit attributable to and subject to taxation in New Hampshire." Id. at 893. In contrast to the tax statute involved in Pandora, the NHIGA does not specify any formula that must be followed by guaranty funds in allocating expenses to insolvent insurers and does not mention the specific factors to be weighed in making such allocations.

policyholder for coverage under the Home policies with respect the 40 Giant lawsuits. Tellingly, however, the Liquidator does not provide any statutory or other legal authority to support his assertion that he has the right to decide, in the context of allocation of expenses to insolvent insurers, how many claims a guaranty association 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 a guaranty association 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 is simply that the Liquidator's *ipse dixit* of "unreasonableness" is all that is required for the Liquidator to disallow allocations of expenses to Home in particular situations.

The Liquidator's power to challenge a guaranty association's decision to treat particular claims as open claims in response to demands for coverage under policies of insolvent insurers should be limited to situations where the evidence supports a finding that the guaranty association's action was a ruse or sham or done in bad faith to shift the association's administrative expenses from other insolvent insurers to Home. If, for example, the evidence in this case was that the Fund in its database created out of whole cloth multiple open claims under Home policies, and such opened claims were not attributable to any underlying lawsuits or claims for damages being presented to the Fund by a Home policyholder, then the Liquidator could legitimately disallow the Fund's allocation of expenses as a sham or a ruse to shift administrative expenses to Home. Quite clearly, as the undisputed facts in this case demonstrate, that is not what happened here.

First, 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 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 opened 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 opened was based on the 40 actual demands for coverage from Western with respect to the Giant lawsuits, and the Fund clearly did not fabricate claims or unduly increase its claim count for any improper purpose.

Second, it is undisputed that each of the 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. Clearly, each of the 40 Giant lawsuits presented a separate source of potential liability to the policyholder and a separate source of potential liability to the Fund for coverage under the Home policies, and each lawsuit

was properly reviewed, evaluated and handled by the Fund as a separate claim. See Surguine Aff. ¶ 8. There is no reasonable basis for the Liquidator's contention that the 40 separate and different Giant lawsuits should have been aggregated and treated as simply one claim under each of the Home policies.

The Liquidator makes several assertions to support his position that the Fund should have opened all of the Giant Claims as one claim under each Home policy. Each of these assertions is without merit.

First, the Liquidator has based his "one claim" argument on unsupported assertions which are contradicted by the undisputed evidence. For example, the Liquidator's brief contains the following inaccurate factual assertions.

- "The Arizona Fund did not spend time and resources analyzing the allegations and facts of 40 separate lawsuits and applying the terms of two policies to those numerous factual situations...[t]here was no individualized analysis....the Arizona Fund never needed to (and did not) conduct individualized analysis of the underlying facts of the lawsuits and take any positions on coverage issues they may have presented." (See Liquidator's Submission at 11, 17, 18 and 20)

The Liquidator has not proffered any evidence to support any of these assertions and, most important, they are directly contradicted by the undisputed testimony of the Fund's Executive Director who has stated that the "Fund's senior adjuster reviewed each complaint against Giant, and reviewed policy information from the Liquidator, including information concerning any pollution exclusion clause," and that "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 Surguine Aff. ¶ 9, 10, 11. All of the Fund's activity regarding the Giant Claims was done pursuant to the Fund's statutory obligation to "investigate claims brought against the fund and adjust, compromise, settle and pay covered claims to the extent of the fund's obligation and deny all other claims," as the Liquidator admits. See

Liquidator's Submission at 6. The Liquidator has not rebutted any of the foregoing testimony, which is directly contrary to the unsupported factual assertions in the Liquidator's brief.

Furthermore, it is undisputed that the Giant lawsuits, which were brought by multiple plaintiffs and alleged groundwater contamination and pollution damage at numerous sites throughout the United States over the course of many years, presented several significant coverage issues including the potential applicability of pollution exclusions, the trigger of coverage, and the time bar defense, among others. Consequently, the Liquidator has no factual basis for asserting that the Fund did not need to and did not spend any time or resources analyzing the Giant lawsuits and that the Fund did not conduct any "individualized analysis" of the Giant Claims with respect to coverage defenses. The Fund's claim cannot be disallowed based on unsupported factual allegations contained in a brief which are contradicted by sworn testimony submitted to the Referee.[2]

The Liquidator 's brief also makes the following inaccurate factual assertions.

- "...[t]he Giant matters raised and were *resolved based on a single, common timeliness issue*....the coverage action was dismissed *because of late notice*...All of the matters presented one common issue: whether Giant's claims were time barred under the Arizona Fund statute and the Board's resolution....The Giant claims presented a single issue that was promptly identified as the basis for denial and the motion for summary judgment, and the Arizona *Fund was dismissed* from the coverage action *accordingly*....[t]he Arizona Fund treated the Giant lawsuits as presenting a single common issue and *they were resolved on that basis*." (See Liquidator's Submission at 17, 19 and 20) (emphasis supplied).

Contrary to these assertions, the undisputed evidence shows that the Giant coverage action was dismissed and resolved as to the Fund because Western obtained full coverage for its

[2] The two letters from the Liquidator to the Fund, dated December 24, 2009 and May 12, 2011, which the Liquidator has submitted in this proceeding as Exhibits 2 and 3, respectively, both contain allegations that, with respect to the Giant Claims, the Fund "did not conduct work on a claim-by-claim basis." These letters are not competent evidence of the statements contained therein since the author of the letters obviously had no personal knowledge as to the work that the Fund did or did not do regarding the Giant claims. Consequently, the Referee must not give those statements any weight or credence in this proceeding.

liabilities for the Giant environmental claims from another insurer, AIG, and not because of any resolution or decision on the Fund's motion for summary judgment in which the Fund raised the time bar defense. In his affidavit submitted to the Referee in this proceeding, and which the Liquidator has not rebutted, the Fund's Executive Director states the following which demonstrates that the Liquidator's factual assertions on this point are erroneous: (1) the Fund asserted the time bar defense in its summary judgment motion that was filed in September 2008, (2) at all times Western refused to agree that the Giant Claims were time barred and told the Fund that it planned to "oppose the Fund's motion based on the statutory language in Section 20-697, which on its face only gives [the Fund] authority to bar 'known claims,'" (3) Western agreed to stay the coverage action as to the Fund while Western pursued coverage from other parties (including AIG), (4) the Fund agreed to extend Western's time to file a written opposition to the Fund's summary judgment motion while Western pursued settlement discussions with AIG, (5) after Western finalized its settlement with AIG under which it obtained the relief it had sought in the coverage action, Western agreed in December 2008 to dismiss its claims against the Fund for no payment and the Fund agreed to withdraw its motion for summary judgment, and (6) on January 23, 2009 the Fund received a copy of the final order of dismissal of Western's claims against the Fund in the coverage action as entered by the Court. See Surguine Aff. ¶¶ 12-17 and Exhibits G through M attached thereto.

It is thus clear from the undisputed record here that Western agreed to dismiss its coverage claims against the Fund because Western had obtained complete relief for the Giant claims from AIG and not because of the time bar defense asserted by the Fund. Contrary to the assertion in the Liquidator's brief, the Giant coverage action was not dismissed "because of late notice." Consequently, the Liquidator's assertion that the single issue of the time bar defense

"resolved" the Giant Claims is factually wrong. The Liquidator's argument that the opening of 40 files was not proper because the coverage action was resolved and dismissed because the Giant Claims were time barred is simply not grounded in fact.

The Liquidator's argument that expenses allocated to Home were "disproportionate" is further flawed because it fails to take into account the undisputed evidence that the Fund was confronted with substantial potential financial risks from the Giant Claims. Specifically, the Fund was exposed to substantial liability ($100,000 for each of the Giant Claims, up to the aggregate coverage limits of the Home policies issued to Giant, see A.R.S. § 20-667 (B)) if the Fund did not ultimately prevail on the time bar defense and applicable coverage defenses (no trigger of coverage and pollution exclusions, for example). In that regard, Western made clear that it disagreed with and would contest the time bar/late notice defense to coverage asserted by the Fund if Western did not obtain full relief from AIG or other parties. See Surguine Aff. ¶ 15 and Ex. L. Indeed, in view of the evidence suggesting that at least 31 of the Giant lawsuits were not known claims until after June 13, 2004 (the Liquidator's bar date), it appears that many of the Giant Claims would not have been time barred if Western had not obtained the relief it needed from AIG and instead had litigated the issue with the Fund. See Surguine Aff. ¶ 11 and Ex. F. Contrary to the Liquidator's conclusory suggestion (see Liquidator's Submission at 11-12 and 20), it was not an open and shut case that the Arizona time bar statute eliminated all liability of the Fund. See the Fund's Memorandum of Facts and Law at 7-10. The Liquidator's suggestion at pages 16-19 that the opening of 80 files was unreasonable because the Arizona time bar statute eliminated all risk to the Fund is unsupported and entirely contrary to the evidence.

The Liquidator further contends that the Fund should have opened only two claims because the Giant lawsuits were transferred from various federal district courts to a New York federal district court and then consolidated for pretrial discovery purposes in that court under special federal court rules. See Liquidator's Submission at 18. This argument is fallacious because decisions by federal courts regarding how they administer environmental liability suits, including decisions such as transferring and consolidating cases, have no relevance to how the Fund, and insurers generally, open, investigate and respond to demands for coverage under insurance policies with respect to lawsuits against their policyholders.

Similarly wide of the mark is the Liquidator's assertion that the Giant lawsuits should be viewed as one claim under the two Home policies because the Fund billed its defense costs for the Giant coverage action to one "Master File," See Liquidator's submission at 18. The Liquidator ignores the fact that the defense costs incurred by the Fund in the coverage action are only a portion of the claims handling expenses which the Fund incurred with respect to the Giant Claims. The Liquidator has not proffered any evidence to show that the Fund accounted for and charged any of its other claims handling expenses for the Giant Claims to any single "Master File." Consequently, the Liquidator's reference to a "Master File" has no relevance to this matter.

The Liquidator also asserts that the Fund should have opened only one claim file for each Home policy because the Liquidator's staff "only opened two claim files on the Giant matters (one for each primary policy issued to Giant)". See Liquidator's Submission at 8. This comparison is inapposite because the bar date applicable to the Liquidator, unlike the Arizona time bar statute applicable to the Fund, applies to all claims, whether known or not. See Surguine Aff. Ex. I (Order of Liquidation attached as Ex. 1 to Affidavit of Kevin L. Kelley In

Support of Fund's Motion for Summary Judgment, at Paragraph(bb)). Thus, while the Liquidator was able to assert a blanket late notice/time bar defense to all of the Giant Claims, the Fund was not in that position. Indeed, Western raised the "known claims" point and a number of Giant Claims may have been unknown. See Liquidator's Submission at 8. Because the Fund did not have the blanket bar date defense asserted by the Liquidator, the Fund was obligated to review the allegations of each of the Giant lawsuits to evaluate whether one or both of the Home policies were triggered and whether coverage potentially existed for the pollution damage alleged in the lawsuits. No such claim-by-claim analysis was required of the Liquidator with respect to the Giant claims. Accordingly, the fact that the Liquidator opened two claims for the Giant claims is utterly irrelevant to the issue of whether the Fund acted reasonably in opening 80 claims for those suits.

Significantly, the Liquidator does not point to any case in which a court has held that an insurer acted improperly, unreasonably or in bad faith by creating a separate claim file for each of several lawsuits brought against a policyholder by different plaintiffs. It is not enough for the Liquidator to argue that the Fund's allocation of expenses to Home is "unreasonable" simply because, as a consequence of the Fund opening 80 claims in response to 40 demands for coverage under 2 policies, the total amount of expenses allocated to Home in 2008 and 2009 commensurately increased compared to prior years. As discussed in Section B. below, the Liquidator has not cited any statutory or legal authority for the analysis that he argues should be applied in these proceedings.

Because the Liquidator accepts the "open-claims" methodology for allocating expenses to Home, the sole issue to be decided in this proceeding is whether the Fund's decision to create 80 open files was a sham or ruse to shift the Fund's expenses from other insolvent insurers to Home.

The Liquidator has not come forward with any proof that the Fund had any illegitimate or improper purpose in opening 80 claims with respect to the Giant lawsuits. Furthermore, the undisputed evidence is that the Fund's decision to open 80 claims files was based on 40 separate demands for insurance coverage relating to 40 separate environmental lawsuits against a Home policyholder, and was not a sham or ruse to shift the Fund's expenses from other insolvent insurers to Home. The position advanced by the Liquidator here—that he can second-guess and reject the Fund's treatment of the Giant Claims as 80 open claims has no basis in law or the facts of this case.

B. Having Accepted The "Open-Claims" Methodology, The Liquidator's Argument that the Fund's Resulting Allocation of Expenses to Home Was Unreasonably "Disproportionate" Is Not Relevant and, In Any Event, Is Based on Fallacious Comparisons.

1. The Liquidator's "Disproportionate" Argument Is Not Relevant To the Issue to Be Decided in This Proceeding.

The main thrust of the Liquidator's submission is his argument that the amount of expenses allocated by the Fund to Home in 2008 and 2009 based on 80 claims was unreasonable because it was "disproportionate" when compared to allocations of expenses to Home in other years, the costs of defending the Giant coverage action, and the loss and ALAE paid by the Fund under Home policies on other claims for those same two years. The Liquidator's "disproportionate" argument has no relevance in view of the Liquidator's acceptance of the "open-claims" methodology and his failure to offer any evidence that the opening of 80 claims for the Giant claims was a sham or ruse. Consequently, the Liquidator's "disproportionate" argument is not a proper basis for the Liquidator's disallowance of the Fund's claims.

Importantly, there is no legal justification for the Liquidator's "disproportionate" analysis. The only case which the Liquidator cites, Huff v. The Integral Insurance Co., 354

S.W.3d 228, 2011 Mo.App. LEXIS 1441 (Mo. Cir. Ct. 2011), is clearly distinguishable from the facts here because 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. Moreover, 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 was properly rejected on that basis. Furthermore, the Huff court ruled in the alternative that, even if the statute could be interpreted as permitting the Fund to recover its general administrative expenses from the insolvent estate, the large amount of the expenses sought ($17,000) "lacked credibility" 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 has not presented any competent evidence to support the conclusory allegations in his brief that the Fund made minimal "actual efforts" in handling and resolving the Giant claims. Indeed, the Liquidator has failed to offer any affidavits or documentary evidence to dispute the Fund's proof, as referenced in the Surguine affidavit which shows the Fund's claims-handling efforts in 2008 and 2009 with respect to the Giant Claims. Consequently, Huff does not support the Liquidator's "disproportionate" argument and the Liquidator does not cite any other legal basis for making it.

2. The Liquidator's Argument that the Fund's Allocation of Expenses to Home for 2008 and 2009 Was Unreasonably "Disproportionate" Has No Merit Because It Is Premised on Fallacious Comparisons.

The Liquidator's "disproportionate" argument is also fatally flawed because it relies on fallacious comparisons. First, the Liquidator repeatedly compares the percentage of the Fund's administrative expenses that were allocated to Home in 2008 and 2009 (43%) to the lower percentage of such expenses allocated to Home for other years (5% to 7%). See Liquidator's Submission at 1, 8, and 23. Of course, that comparison is of no relevance since the allocation of expenses in each year is purely a function of the number of claims open during the year; if the number of open claims reported is accurate, under the "open-claims" methodology the percentage is what it is.[3] The mere fact that the Fund's allocations to Home for those years may have amounted to as much as "40% of the costs of keeping the Arizona Fund in operation for two years" (see Liquidator's Submission at 23) is of no moment when seen in light of the decline of the total number of other claims being administered by the Fund during the time period at issue, as clearly demonstrated in Exhibit 11 attached to the Liquidator's Submission. Obviously, as the number of open claims for other insolvent insurers declines, a higher percentage of the Fund's operational administrative expenses will be allocated to Home with respect to open claims under the Home policies. There is nothing improper in that result. The Liquidator's comparison of percentages is not competent evidence that the Fund's opening of 80 files was not legitimate.

[3] The Liquidator further alleges that the Fund kept the Giant Claims open for an excessive period of time in that the claims were not closed by the Fund until June 2009 even though the final order of dismissal of the Giant coverage action was entered by the court in January 2009. See Liquidator's Submission at 21. Because there is no dispute that the Giant Claims were still open in January 2009, it was proper for the Fund to include the Giant Claims in the allocation of the Fund's expenses to Home for 2009. There is no statutory or other legal basis for the Liquidator to argue that the open-claims methodology for allocating expenses requires apportionment based on the number of months or days that a claim is open in any given year.

Second, the Liquidator compares the total amount of expenses allocated by the Fund to Home in 2008 and 2009 to the total amount of defense costs incurred by the Fund in defending the coverage action involving the Giant Claims. See Liquidator's Submission at 2, 22. Again, that apples to oranges comparison is specious because defending the Giant coverage action is just one of the 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 Liquidator does not have any evidence to show that the Fund did not incur the expenses which were associated with those activities and which the Fund has allocated to Home. The Liquidator's assertion that the Fund's administrative expenses allocated for the Giant Claims were "seventeen times" as much as the coverage defense costs (see Liquidator's Submission at 22) is meaningless. There is no particular ratio of administrative costs to coverage defense costs which is reasonable or unreasonable. Relatively lower coverage defense costs do not compel a conclusion that the other higher administrative costs are unreasonable.

Third, the Liquidator compares the total amount of the Fund's administrative expenses allocated to the Home for 2008 and 2009 for the Giant Claims to the total amount in loss and allocated loss adjustment expense paid by the Fund under Home policies with respect to other claims for those two years. See Liquidator's Submission at 2, 23. This comparison is similarly specious on its face in view of the absence of any information about the facts involved with the other claims that the Fund handled under Home policies.

In view of this and the Liquidator's other fallacious comparisons, the Liquidator's "disproportionate" argument is not credible and must be disregarded. The Liquidator's disallowance of the Fund's claim for $359,851.68 of its administrative expenses for 2008 and 2009 is arbitrary, unreasonable and unjustified.

C. The NCIGF Dues Paid by the Fund Should Have Been Classified as Class I Claims.

Similarly baseless are the Liquidator's attempts to justify its classification of the NCIGF dues paid by the Fund as a Class V "residual claim" (for which there will not be any distribution from the Liquidator). Significantly, in its submission the Liquidator does not rebut the Fund's evidence showing that the "primary function" of the NCIGF is "to assist guaranty funds in handling claims," and the Liquidator expressly admits that the NCIGF's "coordinating guaranty fund's actions regarding certain large claims, allocating claims among guaranty association [and] facilitating transmission of claims data" may be properly classified as relating to "handling claims" as referenced in RSA 404-B:11. See Liquidator's Submission at 25. The Liquidator also does not contest the Fund's evidence that "the primary benefit to guaranty funds of membership in NCIGF is assistance to guaranty funds in claims handling." See Steckbeck Aff. ¶ 6. Nor does the Liquidator dispute any of following statements from the Fund's Answer to the Liquidator's Interrogatory No. 17 in this proceeding regarding the purposes served by the Fund's membership in NCIGF with respect to claims-handling:

> The NCIGF assists [the Fund] and all of its member guaranty funds/associations in meeting their obligations under their respective enabling acts to pay covered claims under policies issued by insolvent insurers. Particularly in multi-state insolvencies such as The Home Liquidation, the NCIGF is a key facilitator in the insolvency process, enabling the member guaranty funds to discharge their statutory duties in a more effective and efficient manner. NCIGF Coordinating Committees serve as a liaison between the liquidator and the affected guaranty funds by..., arranging for and assisting with the flow of claim and financial information utilizing software applications developed by NCIGF and providing a forum for discussion and resolution of problems and issues,...." See Liquidator's Submission at Exhibit 10.

The Liquidator makes no attempt to rebut the Fund's principal argument that the NCIGF has not established two categories of dues—dues relating to claims handling activities and dues relating to other functions—and that the NCIGF does not permit guaranty funds to choose what

services they do not want and thereby receive a reduction in NCIGF dues. The Liquidator does not dispute that a guaranty fund either belongs to the NCIGF and pays the full NCIGF dues and obtains NCIGF benefits including assistance in handling claims, or it does not belong. See Steckbeck Aff. ¶ 7. Moreover, the Liquidator does not dispute that the only way for a guaranty fund to obtain the benefits of the claims handling services of the NCIGF is to pay the full amount of the dues charged by NCIGF.

The Liquidator's argument that NCIGF dues are a Class V claim (for which there would not be distribution from the Liquidator) means that the Fund will not recover anything for dues payments to NCIGF, even though the un-rebutted evidence is that the primary benefit to guaranty associations like the Fund from such dues payments is the claims handling assistance provided by NCIGF. See Steckbeck Aff. ¶¶ 3, 6. The Liquidator's stance on this issue is an unreasonably narrow interpretation of "administrative expenses" and inconsistent with New Hampshire courts' liberal construction of RSA §§ 402-C:44 and 404-B:11. See In the Matter of the Liquidation of Home Ins. Co., 154 N.H. 472, 483-84 (2006). The Liquidator's classification of NCIGF dues paid by the Fund should be reversed and the entire amount of NCIGF dues should be classified as a first priority Class I claim.

CONCLUSION

Boiled down, the Liquidator has two arguments. First, he asserts that the Fund did not and should not have treated the Giant Claims as 80 claims. As demonstrated herein, this conclusory assertion is unsupported by any factual evidence submitted by the Liquidator and is directly contrary to the evidence submitted by the Fund. Second, the Liquidator asserts that the amounts claimed by the Fund for 2008 and 2009 can be declared to be unreasonable because the dollar amount allocated to Home is too great in absolute terms and a greater percentage is

allocated to Home than to other insurers. However, the dollar amount and Home's relative share of expenses are driven by the Home's relative share of the Fund's open files. The Liquidator has not asserted that the amounts paid by the Fund for the components of its administrative expenses (rent, employee costs, etc.) are not appropriate, and thus the overall dollar amount of the Fund's administrative expenses are not challenged by the Liquidator. The fact that the 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 by itself justify a conclusion that the amount claimed by the Fund is unreasonable. Once it is determined that the Liquidator's first argument is invalid, then the Liquidator's second argument is necessarily invalid.

The facilities and staff of the Fund 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 arguments 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 be rejected.

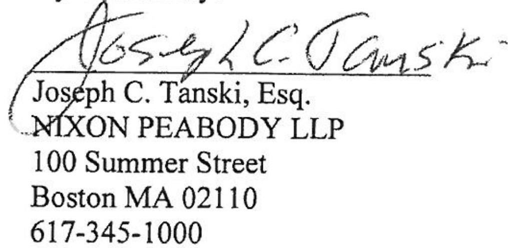
The Liquidator's decisions to disallow the Fund's claimed administrative expenses and to classify all of the NCIGF dues paid by the Fund as a Class V claim are unjustified and unreasonable because they are not supported by applicable law and are contrary to the facts as set forth in the affidavits and exhibits submitted by the Fund herewith. Therefore, the Liquidator's decisions should be rejected and the Fund's claims in these proceedings should be allowed in the

total amount of $446,838.25 as Class I claims in accordance with RSA §§ 402-C:44 and 404-B:11.

Respectfully submitted

ARIZONA PROPERTY AND CASUALTY INSURANCE GUARANTY FUND

By its attorneys

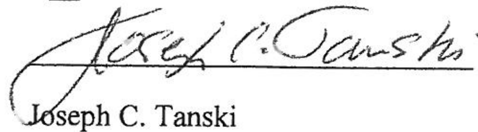


Joseph C. Tanski, Esq.
NIXON PEABODY LLP
100 Summer Street
Boston MA 02110
617-345-1000

September 13, 2012

CERTIFICATE OF SERVICE

I hereby certify that the foregoing and all attachments hereto were served by email and first class mail on all parties in these proceedings on September __, 2012.



Joseph C. Tanski

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