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December 15, 2006

VIA HAND DELIVERY

Eileen Fox, Clerk
New Hampshire Supreme Court
One Charles Doe Drive
Concord, NH 03301-6160

Re: In The Matter of the Liquidation of The Home Insurance Company
No. 2005-0740

Dear Clerk Fox:

Enclosed please find an original and seven copies of Reinsurance Association of America's Motion For Rehearing and Reconsideration of Opinion Issued On December 5, 2006 for filing in the above-referenced matter.

Thank you for your attention to this matter.

Very truly yours,

Lisa Wade Snow

LSW:cmd
Enclosure
cc: Certificate of Service List

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THE STATE OF NEW HAMPSHIRE
SUPREME COURT

In the Matter of the Liquidation of
The Home Insurance Company

No. 2005-0740

REINSURANCE ASSOCIATION OF AMERICA'S MOTION FOR REHEARING AND RECONSIDERATION OF OPINION ISSUED ON DECEMBER 5, 2006

The Reinsurance Association of America ("RAA"), as *amicus curiae,* respectfully moves for a rehearing and reconsideration of this Court's opinion issued on December 5, 2006 in the above appeal (the "December 5 Opinion").[1] This motion is made pursuant to Rule 22(2) of the Supreme Court Rules, which requires the movant to state "the points of law or fact that in the professional judgment of the movant the court has overlooked or misapprehended" in its opinion. In support of the motion, the RAA respectfully states as follows:

1. In the December 5 Opinion, the Court overlooked and misconstrued the facts that the RAA presented in its appellate brief on (1) the detrimental effect that an approval of the Liquidator's scheme would have on the numerous reinsurance contracts involved in insurer insolvencies across the country; and (2) the Liquidator's improper reliance on a drafting note to a proposed model act, the Insurer Receivers Model Act ("IRMA"), which has not been adopted by any state legislature. The RAA respectfully requests that the Court take those facts into account in any rehearing and reconsideration of the December 5 Opinion.

2. In its appellate brief, the RAA pointed out that an approval of the Liquidator's scheme "would disrupt the reinsurance marketplace by decreasing contract certainty and

[1] The RAA hereby incorporates, by reference, the statement of interest that it included in the March 2, 2006 appellate brief ("RAA App. Br.").

subjecting reinsurance agreements to being re-written in the event of a cedent's insolvency." (RAA App. Br. at 1-2.) The RAA noted that reinsurance contracts are required to contain an insolvency clause directing that the reinsurer to pay monies owed under the agreement to the insurer's receiver. (*See id.* at 6-7.) Under the Liquidator's scheme, that language would be cast aside. As the RAA stated in the appellate brief:

> Allowing the Liquidator to collect reinsurance proceeds and then immediately pay them out to certain creditors in contravention of the distribution scheme has the same effect as a direct payment of reinsurance proceeds to selected cedents to the detriment of others in the same class. In this case, the Liquidator is providing the AFIA Cedents with an unauthorized preference by paying them sooner, and no doubt more money, than they would otherwise be entitled to receive under the statute. By guaranteeing reinsurance recoverables before the underlying claims are even approved by the liquidation court, the Liquidator is improperly changing the indemnity nature of the reinsurance contracts. ... The Superior Court's Orders establish a slippery slope for allowing liquidators to unilaterally modify reinsurance agreements post-receivership, thereby resulting in uncertainty in the New Hampshire marketplace and beyond. ... That uncertainty in the marketplace may ultimately have a negative impact on insureds in New Hampshire.

(*Id.* at 7-8.)

3. These issues were not addressed at all in the December 5 Opinion. The Court stated that the "there is little risk the priority provisions of RSA 402-C:44 will be violated" because the liquidation court oversees the claims process. (December 5 Opinion at 10). However, the supervisory role of the liquidation court will not prevent lower priority creditors in New Hampshire -- and elsewhere -- from demanding priority-distorting deals akin to the arrangement between the Liquidator and the AFIA Cedents. Liquidators in New Hampshire and in other states would likely be plagued by litigation in which the creditors seek a similar "inducement" payment on the grounds that they too would be bringing a benefit to the estate. The cost to the estates of insolvent insurers in litigating such issues could be enormous. That, in turn, would reduce the funds available to other creditors and would adversely affect the orderly administration of receiverships, which is one of the primary goals of liquidation statutes.

4. The Court also overlooked the facts that the RAA presented in its appellate brief regarding IRMA. The RAA noted in its appellate brief that there are several reasons why the Court should not rely on the drafting note for Section 801 of IRMA.

5. First, the drafting note has nothing to do with the NAIC model act which formed the basis of the New Hampshire statute and the statutes in most other states. As such, neither the drafting note nor IRMA has any relevance here. (*See id.* at 2-3.)

6. Second, even if the drafting note for Section 801 were somehow relevant, it does not support the Liquidator's argument that he may circumvent the priority statute by calling the claims payments to AFIA Cedents "administration costs." The drafting note simply says that, as a general matter, a liquidator may make administrative expense payments to lower priority creditors; it does not address the situation here, where the Liquidator wants to make those payments in lieu of claims distributions to the AFIA Cedents and as a result of the claims that the AFIA Cedents have against Home's estate under reinsurance agreements. (*Id.* at 3.)

7. Third, the interpretation of the drafting note that the Court adopted in the December 5 Opinion was expressly rejected during the debate over Section 801 of IRMA. Language that would have authorized liquidators to classify payments to lower priority creditors as administrative costs was intentionally removed from the text of IRMA because of opposition within the NAIC Model Act Revision Working Group ("MARG"). Opponents of the language argued that the inclusion of the language in IRMA could create problems because it could entice companies to bargain for the payment of Class I incentive payments in exchange for their cooperation. Instead, MARG agreed to the language in the drafting note on the grounds that it simply confirmed the discretionary power that liquidators already had to incur administrative expenses. (*See id.* at 3-4.) Significantly, even that language was not in IRMA itself and was only included in the drafting note.

8. Thus, it is clear that the Court should have not given any consideration to IRMA or the drafting for Section 801 in determining the issues before it.

WHEREFORE, the RAA respectfully requests that the Court rehear and reconsider the December 5 Opinion.

Respectfully submitted,

REINSURANCE ASSOCIATION
OF AMERICA

By its attorneys,

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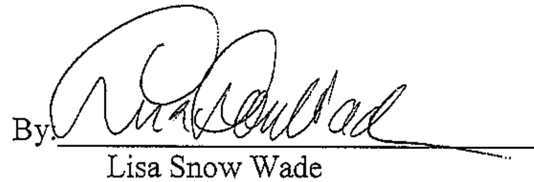
Dated: December 15, 2006



By ______________________
Lisa Snow Wade

-and-

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Certificate of Service

I, Lisa Snow Wade, Esq., hereby certify that on this 15th day of December, 2006, I have caused a copy of the foregoing MOTION OF REINSURANCE ASSOCIATION OF AMERICA IN SUPPORT OF MOTION FOR REHEARING AND RECONSIDERATION OF OPINION ISSUED ON DECEMBER 5, 2006 to be forwarded by first class US mail to:

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