UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

A.P.I., Inc. Asbestos Settlement Trust, et al., Plaintiffs, vs. Home Insurance Company, et al., Defendants.	))))))))))))	Civil Case No.: 09-cv-00975-JRT-TNL **BRIEF OF *AMICUS CURIAE* NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS**

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

I. STATEMENT OF INTEREST 1

II. STATEMENT OF FACTS 3

III. ARGUMENT 3

A. Numerous State Insurance Commissioners Approved The Recapitalization Transaction Central To This Matter, Determining The Fairness To Policyholders And Intending To Provide Finality To The Regulatory Approval Process.

B. The NAIC Receivership Model Laws, And State Legislation Based Upon Them, Provide The Regulatory Framework For Insurer Liquidation, Including The Handling And Management Of Plaintiffs' Claims.

IV. CONCLUSION 17

TABLE OF AUTHORITIES

CASES

Page

Brown v. Associated Ins. Consultants, 714 So.29 939 (La. App. 1989) 16

Lac D'amiante Du Quebec, Ltee v. Am. Home Assurance Co., 864 F.2d 1033 (3d Cir. 1988) 16

STATE STATUTES

CAL. INS. CODE § 1215 (2011) 9

CAL. INS. CODE § 12940 (2011) 9

215 ILL. COMP. STAT. ANN. 5/131.4 (2011) 9

215 ILL. COMP. STAT. ANN. 5/131.8 (2011) 9

215 ILL. COMP. STAT. ANN. 5/131.27 (2011) 9

IND. CODE ANN. § 27-1-23-2 (2011) 9

IND. CODE ANN. § 27-1-23-12 (2011) 9

N.H. REV. STAT. ANN. § 401-B:3 (2011) 9

N.H. REV. STAT. ANN. § 401-B:14 (2011) 9

N.H. REV. STAT. ANN. § 402-C:1 (2011) 15

N.J. STAT. ANN. § 17:27A-2 (2011) 9

N.J. STAT. ANN. § 17:27A-12 (2011) 9

N.J. STAT. ANN. § 17B:32-31 (2011) 15

TEX. INS. CODE ANN. § 443.001 (2011) 15

TEX. INS. CODE ANN. § 823.013 (2011) 9

TEX. INS. CODE ANN. § 823.154 (2011) 9

TEX. INS. CODE ANN. § 823.159 (2011) 10

WIS. ADMIN. CODE INS. § 40.02 (2011) 10

WIS. STAT. ANN. § 227.42 (2011) 10

WIS. STAT. ANN. § 601.62 (2011) 10

WIS. STAT. ANN. § 611.72 (2011) 9

WIS. STAT. ANN. § 645.01 (2011) 15

OTHER AUTHORITIES

I *Proc. of the Nat'l Ass'n of Ins. Comm'rs* 18 (1871) 13

I *Proc. of the Nat'l Ass'n of Ins. Comm'rs* 33 (1936) 12

I *Proc. of the Nat'l Ass'n of Ins. Comm'rs* 222 (1978) 5

II *Proc. of the Nat'l Ass'n of Ins. Comm'rs* 308 (1966) 4

II *Proc. of the Nat'l Ass'n of Ins. Comm'rs* 736 (1969) 4

II *Proc. of the Nat'l Ass'n of Ins. Comm'rs 22* (1980) 5

II *Proc. of the Nat'l Ass'n of Ins. Comm'rs* 49 (1982) 5

II *Proc. of the Nat'l Ass'n of Ins. Comm'rs* 93 (1986) 5

II *Proc. of the Nat'l Ass'n of Ins. Comm'rs 4th Qtr*. 546 (2001) .11

III *Proc. of the Nat'l Ass'n of Ins. Comm'rs* 193 (1988) 11

3 NAIC MODEL LAWS, REGULATIONS AND GUIDELINES, Insurance Holding Company System Regulatory Act, pp. 440-1 to 440-28 (2001) 2, 6, 7,8

3 NAIC MODEL LAWS, REGULATIONS AND GUIDELINES, Insurance Holding Company System Model Regulation with Reporting Forms and Instructions, pp. 450-1 to 450-26 (2001) 2

3 NAIC MODEL LAWS, REGULATIONS AND GUIDELINES, Insurance Receivership Model Act, pp. 555-1 to 555-98 (2007) 2, 3, 13, 15

NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS, FINANCIAL REGULATION STANDARDS AND ACCREDITATION PROGRAM (2011) 7

I. STATEMENT OF INTEREST

The National Association of Insurance Commissioners ("NAIC") is a non-profit corporation whose membership consists of the principal insurance regulatory officials of the fifty states, the District of Columbia, and the territories and insular possessions of the United States. Founded in 1871, it is the nation's oldest association of state government officials. The NAIC represents the coordinated and considered views of the state government officials that regulate the insurance industry and enforce the insurance laws of the country.

The NAIC's purpose is to provide its members with a national forum enabling them to work cooperatively on regulatory matters that transcend the boundaries of their own jurisdictions. Collectively, the state insurance commissioners work to develop model legislation, rules, regulations, white papers and actuarial guidelines that promote and establish uniform regulatory policy. Their overriding objectives are to protect consumers as well as assist in maintaining the financial stability of the insurance industry.

The NAIC performs numerous crucial services on behalf of state governments, including the development and publication of model laws, regulations, bulletins, financial and accounting standards, white papers, consumer guides, handbooks, periodicals and the *Proceedings of the NAIC*. Hundreds of state and federal laws assign duties to the NAIC and incorporate NAIC standards, models and other publications. In addition, the NAIC manages and coordinates the accreditation of state insurance departments for financial solvency regulation and maintains regulatory and financial databases of insurance company financial data.

The interest of the NAIC in this case arises from each member's interest in promoting the dual and often competing objectives of consumer protection and insurer solvency. Individually and collectively, the NAIC members and the state agencies over which they preside have a wealth of experience in the regulation of insurance. The NAIC members understand the interests of insurance consumers and work daily to protect those interests. The NAIC members are uniquely qualified and situated to assist this Court by presenting the regulatory and public policy concerns involved in this case.

The NAIC has an interest in the interpretation and application of its model laws and regulations and in promoting the uniformity of those laws and regulations among the states. New Hampshire, California, Illinois, Indiana, New Jersey, New York, Texas and Wisconsin all participated in hearings or approved the recapitalization transaction at the center of this dispute. State regulators utilized the change in control process prescribed by the NAIC Insurance Holding Company System Regulatory Act ("Model Holding Company Act") and the NAIC Insurance Holding Company System Model Regulation with Reporting Forms and Instructions ("Model Holding Company Regulation"). *See Affidavit of David M. Aafedt ("Aafedt Aff.")*, Exhibit 1 (3 NAIC MODEL LAWS, REGULATIONS AND GUIDELINES, Insurance Holding Company System Regulatory Act, pp. 440-1 to 440-28 (2001)) and Exhibit 2 (3 NAIC MODEL LAWS, REGULATIONS AND GUIDELINES, Insurance Holding Company System Model Regulation with Reporting

Forms and Instructions, pp. 450-1 to 450-26 (2001)).[1] In addition, all states have enacted legislation based on NAIC model laws regarding insurer receiverships. *See, e.g., Aafedt Aff.,* Exhibit 3 (3 NAIC MODEL LAWS, REGULATIONS AND GUIDELINES, Insurance Receivership Model Act, pp. 555-1 to 555-98 (2007)). These model laws and associated regulatory frameworks were developed to ensure that all interested states would have the opportunity to participate in proceedings related to the change in control of an insurer or group of affiliated insurers, as well as ensure the orderly and equitable distribution of claims related to an insurer liquidation. These model laws provide a statutory and public policy foundation for managing and handling the complex issues associated with insurance groups, including situations involving troubled insurers where the regulatory interest in consumer protection is greatest. Consequently, the NAIC has a significant interest in this matter to ensure that its model laws and the state statutes based on these models are interpreted and applied consistently. We seek to aid this Court by offering the legal position and public policy perspectives of the NAIC and its members.

II. STATEMENT OF FACTS

Amicus curiae NAIC agrees with the undisputed facts set forth in the Memorandum of Law in Support of Defendants' Motion for Summary Judgment, and respectfully adopts and incorporates by reference the Defendants' Statement of Undisputed Facts.

[1] In December 2010, the NAIC adopted amendments to the Model Holding Company Act and Model Regulation. However, the amendments did not affect substantially the change in control process.

III. <u>ARGUMENT</u>

A. Numerous State Insurance Commissioners Approved The Recapitalization Transaction Central To This Matter, Determining The Fairness To Policyholders And Intending To Provide Finality To The Regulatory Approval Process.

In 1995, in a coordinated effort, several states approved the recapitalization transaction that is at the heart of the present matter. The regulatory proceedings conducted for the purpose of evaluating the recapitalization transaction were based on the Model Holding Company Act. This litigation threatens to upset the national regulatory scheme for the orderly consideration of transactions falling within the scope of the Model Holding Company Act.

In the mid-1960s, in response to the proliferation of holding companies' involvement in the business of insurance, the NAIC began to study and implement methods to regulate holding companies that acquire and control insurers. "The public interest would seem to require that [insurance commissioners] initiate steps to supervise management, control and operation of holding companies." *Aafedt Aff.,* <u>Exhibit 4</u> (II *Proc. of the Nat'l Ass'n of Ins. Comm'rs* 308 (1966)). In 1969, the NAIC developed and adopted the Model Holding Company Act, which requires prior approval of a change in control of a domestic insurer. *Id.* (II *Proc. of the Nat'l Ass'n of Ins. Comm'rs*. 736, 737, 738-751, 756 (1969)). The drafters of the Model Holding Company Act sought to balance the need for effective regulation with the need not to discourage potential investors. *Id.* (II *Proc. of the Nat'l Ass'n of Ins. Comm'rs* 49 (1982)). The Model Holding Company Act reflects the following goals and policies: "(1) to maintain the

solvency of insurers; (2) to protect policyholders by supervising the adequacy of the insurer's surplus; (3) to provide standards for fair intrasystem transactions; (4) to encourage state regulation of insurance; and (5) to base regulatory efforts on the principles of registration, disclosure and prior approval of certain transactions . . . ." *Id.* (II *Proc. of the Nat'l Ass'n of Ins. Comm'rs* 49 (1982)).

In June 1980, the NAIC amended the Model Holding Company Act by adding a section that applies specifically to any acquisition or merger of a domestic insurer which would result in a change in control. *Id.* (II *Proc. of the Nat'l Ass'n of Ins. Comm'rs 22, 26, 29, 42-46* (1980) *(amended, added Section 3.1)).* Section 3 of the Model Holding Company Act was intended to provide protections against detrimental takeovers of insurance companies by regulating mergers and acquisitions. *Id.* (I *Proc. of the Nat'l Ass'n of Ins. Comm'rs* 222 (1978)).[2] This section required persons who proposed to acquire or merge with a domestic insurer to file a statement giving financial and other information; provided that takeovers were subject to prior approval; and set forth grounds upon which a denial must be based, such as a finding that the proposed takeover might lead to the insurer's insolvency or undercut a policyholder's interests. *Id.* The Model Holding Company Regulation, which sets forth the specific forms and content required to be filed with the Commissioner to be considered prior to approval, was revised in 1986 to conform to the revised Holding Company Model Act. *Id.* (II *Proc. of the Nat'l Ass'n of Ins. Comm'rs* 93 (1986)).

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[2] The NAIC began discussions to amend the Model Holding Company Act by adding Section 3 in 1978. The amendments were adopted in 1980.

Various iterations of the Model Holding Company Act and Model Holding Company Regulation have developed throughout the years, but the primary purpose of the models has remained largely unchanged. That is, the models have sought to allow state insurance commissioners to analyze and approve transactions that meet the criteria of a change in control of an insurer for the purposes of ensuring financial solvency of the insurer and protecting the interests of policyholders. Under the current version of the Model Holding Company Act, a change in control shall be presumed if certain ownership or voting thresholds are reached but the commissioner may also excise discretion to review a transaction based on scale or scope. *See Aafedt Aff.,* Exhibit 1 (3 NAIC MODEL LAWS, REGULATIONS AND GUIDELINES, Insurance Holding Company System Regulatory Act, pp. 440-1 to 440-28 (2001)).[3] Therefore, the filing requirements may be triggered under various circumstances, regardless of whether the transaction results in a complete change of ownership in a company. Accordingly, as in this instance, the Model Acts provide a mechanism to evaluate and approve proposed transactions and to contest any issues related to the proceedings in order to protect consumers and provide a degree of finality and certainty to a transaction.

Every state has adopted a version of the Model Holding Company Act and Model Holding Company Regulation that is substantially similar to the NAIC models. *See* Exhibit 5 (NAIC Model Holding Company Act State Page and NAIC Insurance Holding Company Model Regulation with Reporting Forms and Instructions State Page).

[3] The Model Holding Company Act was amended in December of 2011. However, the amendments did not substantially change the referenced provisions.

Additionally, state enactment of both Model Acts is an element of the NAIC Financial Regulatory Accreditation Program. In order to be accredited for financial solvency regulation, a state must have enacted various key elements of the Model Holding Company Law and Model Holding Company Regulation. NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS, FINANCIAL REGULATION STANDARDS AND ACCREDITATION PROGRAM (2011).[4]

The Model Holding Company Act, and substantially similar provisions enacted in all states, sets forth a complete and comprehensive procedure for filing, approval, objecting to, or appealing transactions, such as the recapitalization transaction, that result in a change in control of an insurer. Section 3.A.(1) of the Model Holding Company Act provides that a change in control may not be effectuated without the prior approval of the insurance commissioner:

> No person shall make a tender offer for . . . acquire or seek to acquire any voting security of a domestic insurer, if after the consummation thereof, such person would directly or indirectly . . . be in control of the insurer, and no person shall enter into an arrangement to merge with or otherwise to

[4] Found at http://www.naic.org/documents/committees_f_FRSA_pamphlet.pdf. Accreditation is the process by which a program has been certified as fulfilling certain standards by a national professional association. In the terms of insurance financial solvency regulation, accreditation is a certification given to a state insurance department once it has demonstrated it has met and continues to meet an assortment of legal, financial and organizational standards as determined by a committee of its peers. The Financial Regulation Standards and Accreditation (F) Committee of the NAIC, consisting of regulators from across the country, ultimately decides whether a state meets the requirements set forth in the Standards. Full Accreditation Reviews occur once every five years subject to interim annual reviews. The review entails a full review of laws and regulations, the financial analysis and financial examinations functions, and organizational and personnel practices to assist in determining a state's compliance with the accreditation standards. As of October 2010, all fifty states and the District of Columbia are accredited.

> acquire control of a domestic insurer . . . unless such person has filed with the commissioner . . . a statement containing all the information required by this section and the offer, request, invitation, agreement or acquisition has been approved by the commissioner in the manner set forth in this Act . . . .

Aafedt Aff., Exhibit 1 (3 NAIC MODEL LAWS, REGULATIONS AND GUIDELINES, Insurance Holding Company System Regulatory Act, pp. 440-4 (2001)). The filing required to be made with the insurance commissioner is often referred to a "Form A filing." *Id.* Section 3.A.(1) provides the commissioner with the discretion to review and request pertinent information in a Form A filing and ensures prior commissioner approval is required. *Id.* Section 3.D.(1) of the Model Holding Company Act sets forth the standards governing the commissioner's review of the Form A filing:

> The commissioner shall approve any merger or acquisition of control . . . unless, after a public hearing, the commissioner finds that . . . the financial condition of any acquiring party is such as might jeopardize the financial stability of the insurer, or prejudice the interests of policyholders; the plans or proposals which the acquiring party has to liquidate the insurer, sell its assets or consolidate or merge it with any person, or make any other material change in its business or corporate structure or management, are unfair or unreasonable to policyholders of the insurer and not in the public interest; . . . the acquisition is likely to be hazardous or prejudicial to the insurance-buying public. . . .

Id. (3 NAIC MODEL LAWS, REGULATIONS AND GUIDELINES, Insurance Holding Company System Regulatory Act, pp. 440-7 (2001)). Section 3.D.(1) is clear that the financial condition of the insurer and the protection of policyholders are among the factors to be considered by the commissioner in reviewing the proposed transaction. *Id.* Further, Section 3.D.(2) provides for a public hearing to consider the Form A filing, with notice provisions as well as the opportunity for participation by parties affected by the

transaction. *Id.* at pp. 440-7 to 440-8 (2001). Finally, where interested parties remain aggrieved by or opposed to an action taken by the insurance commissioner, Section 14.A allows for such parties to seek redress through the judicial system of the state where the transaction has been considered. *Id.* Specifically, Section 14.A allows "[a]ny person aggrieved by any act, determination, rule regulation or order or any other action of the commissioner pursuant to this Act may appeal to the [appropriate state district] Court. The court shall conduct its review without jury trial and by trial *de novo*. . . ." *Id.* at pp. 440-25 (2001).

Thus, the Model Holding Company Act establishes the requirements for reviewing Form A filings, sets a standard by which the commissioner's decision can be appealed and reviewed, allows for interested party participation, and provides for judicial review. In other words, the Model Holding Compact Act was drafted to ensure the fair and orderly completion of transactions such as the one at issue in this case.

State legislatures have enacted provisions substantially similar to the ones quoted above into their insurance codes in recognition of the need for a fair and orderly process for reviewing complex insurance company transactions. In fact, such provisions have been enacted by the states that approved the Form A filings related to the recapitalization at issue in these proceedings. CAL. INS. CODE § 1215 (2011) (filing requirements); CAL. INS. CODE § 12940 (2011) (judicial review); 215 ILL. COMP. STAT. ANN. 5/131.4 (2011) (filing requirements); 215 ILL. COMP. STAT. ANN. 5/131.8(2011) (hearing requirements); 215 ILL. COMP. STAT. ANN. 5/131.27 (2011) (judicial review); IND. CODE ANN. § 27-1-23-2 (2011) (filing and hearing requirements); IND. CODE ANN. § 27-1-23-12 (2011)

(judicial review); N.H. REV. STAT. ANN. § 401-B:3 (2011) (filing and hearing requirements); N.H. REV. STAT. ANN. § 401-B:14 (2011) (judicial review); N.J. STAT. ANN. § 17:27A-2 (2011) (filing and hearing requirements); N.J. STAT. ANN. § 17:27A-12 (2011) (judicial review); TEX. INS. CODE ANN. § 823.154 (2011) (filing requirements); TEX. INS. CODE ANN. § 823.159 (2011) (hearing requirements); TEX. INS. CODE ANN. § 823.013 (2011) (judicial review); WIS. STAT. ANN. § 611.72 (2011) (filing requirements); WIS. ADMIN. CODE INS. § 40.02 (2011) (filing requirements); WIS. STAT. ANN. § 227.42 (2011) (hearing requirements); WIS. STAT. ANN. § 601.62 (2011) (judicial review).[5] Therefore, the models and state enactment of the models generally provide ample opportunity for policyholders to do what plaintiffs seek to do in the present matter: raise objections to the substance of a proposed Form A transaction and request administrative and judicial review of the transaction. Because plaintiffs' action could effectively undo the finality of the recapitalization transaction approved by several state insurance commissioners in 1995, there is a risk of undermining the stability and uniformity of the national regulatory system fostered by the models. In fact, plaintiffs' action in this Court may achieve a result whereby aggrieved parties could circumvent uniformly enacted statutes and uniformly established procedures carried out under the laws of one or more states by filing a separate, distinct action in the court of another state.

[5] Although California, Texas and Wisconsin do not have the public hearing requirement, they still provide procedures through which a policyholder or interested party can appeal or challenge the decision of a commissioner with respect to the approval or denial of an acquisition or merger. Moreover, although these states do not have the public hearing requirement, all interested parties were able to participate in the New Hampshire public hearing.

In addition to NAIC model holding company provisions, the state regulatory system related to troubled company situations is buttressed by cooperative programs and procedures. State insurance regulators often coordinate with one another regarding the financial stability of companies operating in multiple states. State insurance regulators rely upon their collective expertise, as well as the specific expertise of those regulators with in-depth knowledge of a particular company, in order to monitor insurers' financial stability. For example, the NAIC created the Financial Analysis Working Group (FAWG), which consists of various state regulators, to analyze those nationally significant insurers and insurance groups that exhibit characteristics of trending toward or being financially troubled and to determine if appropriate action is being taken. FAWG interacts with domiciliary regulators and "lead states" to assist and advise as to appropriate regulatory strategies, methods and actions and to support, encourage, promote and coordinate multi-state efforts in addressing solvency problems, including identifying adverse industry trends. FAWG and similar regulatory forums provide for domiciliary states deference with other states' active participation. *See Aafedt Aff.*, Exhibit 4 (III *Proc. of the Nat'l Assoc. of Ins. Comm'rs* 193-196 (1988) (describing FAWG)). In the underlying transaction at issue in this case, New Hampshire assumed an active role similar to that of a lead state in developing a solution – in tandem with other regulators – that improved the financial stability of the insurer and protected policyholder interests.

In the early 2000s, the NAIC, through its National Treatment Working Group, began discussions regarding Form A filings involving the acquisition or merger of

insurance groups involving insurers domiciled in multiple states. *Id.* (II *Proc. of the Nat'l Ass'n of Ins. Comm'rs 4th Qtr.* 546 (2001)). The Working Group utilized a lead state concept where a single lead state with the greatest understanding of the insurance group's overall business operations would coordinate the Form A filings. The "non-lead" states would still conduct their required reviews and hearings in accordance with their respective state insurance statutes and regulations. *Id.* To facilitate the lead state process and to ensure proper coordination, the NAIC's Insurance Holding Company (E) Working Group developed a Framework for Insurance Holding Company Analysis. This framework endorses the lead state concept, explains factors used to determine which states are considered lead states, and clarifies the role of the lead states and the role of the other states. The lead state concept allows one state to coordinate the regulatory processes and allows for complete and open communications among state regulators. A similar concept was employed with the transaction involved in this matter with New Hampshire effectively serving as the lead state regulator, working in conjunction with the other interested states prior to approving the transaction. New Hampshire hired experts to prepare reports that were used in the review of the recapitalization and held public hearings in which other states participated and were represented. Based on the reasoned analysis of the state regulators and based on all of the forms and evidence presented, the commissioners of the aforementioned states approved the transaction they believed would be in the best interests of the policyholders.

The statutes and regulations governing the approval of changes in control of insurers set forth a comprehensive scheme that has been enacted in all states. With

regard to the recapitalization transaction, the commissioners worked in coordination with one another to ensure financial stability of a company and to consider the best interests of policyholders.[6] Plaintiffs' action potentially upsets a system that has been enacted, coordinated and successfully implemented. Allowing plaintiffs to upset this system would call into question the ability of insurance regulators to manage and coordinate complex transactions such as the one led by New Hampshire with the active participation and approval of several sister state insurance departments.

B. The NAIC Receivership Model laws, And State Legislation Based Upon Them, Provide The Regulatory Framework For Insurer Liquidation, Including The Handling And Management Of Plaintiffs' Claims.

The NAIC's Insurance Receivership Model Act ("IRMA") and its predecessor model laws have established comprehensive statutory schemes governing receivership and liquidation proceedings, including a mechanism for disputing and bringing claims during an insurer liquidation.

Since its formation in 1871, at which time the Committee on Winding Up Insolvent Companies was formed, the NAIC has addressed issues regarding the treatment of insolvent or troubled insurers. *Aafedt Aff.,* Exhibit 4 (I *Proc. of the Nat'l Ass'n of Ins. Comm'rs* 18 (1871)). In 1936, the NAIC adopted the first of the NAIC receivership models, the Uniform Rehabilitation, Reorganization, or Liquidation Act ("1936 Model"). *Id.* (I *Proc. of the Nat'l Ass'n of Ins. of Comm'rs* 33 (1936)). The 1936 Model first

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[6] N.H. REV. STAT. ANN. § 401-B:14 (2009) ("Any person aggrieved by any act, determination, rule, regulation, or order of any other action of the commissioner pursuant to this chapter may appeal [pursuant to the administrative procedures act]."); *See also e.g.,* 215 ILL. COMP. STAT. ANN. 5/131.27 (2009); IND. CODE ANN. § 27-1-23-12 (2010); N.J. STAT. ANN. § 17:27A-12 (2009); TEX. INS. CODE ANN. § 823.013 (2009).

created a uniform procedure so that all creditors, including policyholders and claimants residing in reciprocal states, were on an equal footing with those in the domiciliary state. *Id.* at 31-33.

The NAIC receivership models have evolved over time from a general statement of intent to protect unsecured creditors to a comprehensive statutory scheme to govern the liquidation or rehabilitation of an insolvent insurer. With every revision of the NAIC model, the model has become more specific and detailed[7] in an effort to promote greater nationwide consistency and certainty in the course of a liquidation or rehabilitation. The NAIC receivership models are created and revised with input from the insurance commissioners and other interested parties.[8] Each version of the receivership models represents the collective wisdom and best practices of the state insurance commissioners. The 2005 version of the receivership models, referred to as IRMA, is the version of the model law in effect today.

More specifically, the receivership models and state statutes based on the models clearly set forth the authority of the liquidator and are intended to prevent collateral challenges such as the claims brought by the plaintiffs in this action. All states have

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[7] The 1936 Model was two pages; the current version of the NAIC model is 98 pages. *See, Aafedt Aff.,* Exhibit 3b (Insurer Receivership Model Act, 3 *NAIC Model Laws, Regulations and Guidelines*, 555-1 to 555-98 (2007)).

[8] See, generally, Carolyn Johnson, *How a Model Becomes a Law,* Contingencies, *March/April 1997,* at 33-35 (explaining the process of creating and adopting a NAIC model law involves participation by state regulators, consumers, and industry representatives; public hearings, public meetings, and written comments are considered in the drafting process; the model law drafting process may take months or years in order to reach a consensus).

adopted a version of the NAIC model based, in part, on either IRMA or its predecessors. *See Aafedt Aff.,* Exhibit 6 (NAIC Insurer Receivership Model Act State Page) and Exhibit 7 (NAIC Insurers Rehabilitation and Liquidation Model Act State Page). As a requirement for accreditation for financial solvency regulation, each state must enact a receivership scheme similar to the NAIC model for the administration, by the insurance commissioner, of companies found to be insolvent. As stated in IRMA, one of the purposes of the Act "is the protection of the interests of insureds, claimants, creditors and the public generally through enhanced efficiency and economy of liquidation, through clarification of the law, to minimize legal uncertainty and litigation." *Aafedt Aff.,* Exhibit 3b (3 NAIC MODEL LAWS, REGULATIONS AND GUIDELINES, Insurance Receivership Model Act, § 101 Purpose and Scope, pp. 555-3 to 555-4 (2007)); *see e.g.,* N.H. REV. STAT. ANN. § 402-C:1 (2011) ("The purpose of this chapter is the protection of the interests of insureds, creditors, and the public generally, with minimum interference with the normal prerogatives of proprietors, through . . . [e]nhanced efficiency and economy of liquidation, through clarification and specification of the law, to minimize legal uncertainty and litigation . . ." and "[l]essening the problems of interstate rehabilitation and liquidation by facilitating cooperation between states in the liquidation process") and N.J. STAT. ANN.§ 17B:32-31 (2011); TEX. INS. CODE ANN. § 443.001 (2011); WIS. STAT. ANN. § 645.01 (2011).

In order to facilitate cooperation among the states and ensure orderly liquidations, state insurance regulators often work together on liquidation proceedings, particularly where they involve multi-state insurers. In addition, the NAIC established a Receivership

and Insolvency (E) Task Force, whose mission includes monitoring the effectiveness and performance of state administration of receiverships and the state guaranty fund system; coordinating cooperation and communication among regulators, receivers and guaranty funds; monitoring ongoing receiverships; and reporting on such receiverships to NAIC members.[9]

Allowing this case to proceed in Minnesota, in the midst of liquidation proceedings in New Hampshire, not only adds uncertainty to the liquidation process, but also would benefit only a small number of policyholders to the detriment of the remaining policyholders who have properly presented claims pursuant to the liquidation proceedings in New Hampshire. Aside from the practical necessity of having one state and its court oversee and manage an insurer liquidation, exclusive single-state jurisdiction means that claims of policyholders must be brought in the state where the liquidation is proceeding. The reason is the "paramount interest of the . . . [s]tates in seeing that insurance companies domiciled within their respective boundaries are liquidated in a uniform, orderly and equitable manner without interference from external tribunals." *Lac D'amiante Du Quebec, Ltee v. Am. Home Assurance Co.*, 864 F.2d 1033, 1041 (3d Cir. 1988) (*citing G.C. Murphy Co. v. Reserve Ins. Co.*, 429 N.E.2d 111, 117 (1981)). Although plaintiffs in this matter have properly filed claims in the New Hampshire liquidation matter, their attempt to bring claims in this Court impedes the authority of the New Hampshire commissioner to manage an orderly liquidation. Plaintiffs' course of

[9] http://www.naic.org/committees_e_receivership.htm describing the mission of the Receivership Task Force.

action conflicts with the New Hampshire commissioner's authority and powers under both the New Hampshire holding company law and the New Hampshire rehabilitation and liquidation law. In *Brown v. Associated Ins. Consultants*, the court held that shareholders of an insurance company in liquidation may be precluded from objecting to the actions of an insurance commissioner in furtherance of a liquidation order because the objection improperly interferes with the powers and duties of the commissioner and collaterally attacks the order. 714 So.2d 939 (La. App. 1989). The shareholders in *Brown* sought an injunction to prevent the sale of certain assets of the insurer. *Id.* The court found the rehabilitation and liquidation statutes in Louisiana, which are similar in nature to those at issue here, were comprehensive and exclusive. *Id.* at 942. The Commissioner was specifically entitled, pursuant to statute, to sell or dispose of property pursuant to court order. *Id.* Consequently, based on the statutory liquidation scheme, the shareholders were not entitled to bring an action outside of the liquidation proceeding which would interfere with the powers and duties of the commissioner. Plaintiffs in this action, similarly attempt to interfere with the powers and duties of the New Hampshire liquidator by bringing claims in this Minnesota federal court which if permitted to proceed, could substantially affect the rights of other claimants in the liquidation proceeding and clearly interfere with the New Hampshire liquidator's ability to fairly and equitably pay the claims of all policyholders.

IV. CONCLUSION

Allowing this litigation to proceed potentially upsets an established, national regulatory approach for matters falling within the scope of holding company and

receivership laws. This litigation potentially calls into question numerous other Form A proceedings that have been heard, considered, and finally approved in various states. The same uncertainty would affect the receivership and liquidation processes. The purpose of the NAIC model laws regarding holding company transactions and receiverships, and the state statutes based upon them, would be thwarted by allowing plaintiffs to litigate issues in an inappropriate distant venue. Those aspects of the state regulatory system where state insurance departments actively engage and work cooperatively to develop comprehensive solutions to troubled company situations would be similarly adversely affected. The NAIC and its members developed the model laws, and subsequently worked for enactment of those models in their respective states, to ensure uniformity, efficiency and finality of their orders and proceedings and to protect the interests of all policyholders. That uniformity, efficiency and finality are jeopardized by an action such as the present matter.

For the foregoing reasons, the NAIC respectfully requests that this Honorable Court grant Defendants' Motion for Summary Judgment.

Dated: July 21, 2011

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