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February 7, 2008

Hon. Neil H. Shuster, P.J. Ch. Div.
Superior Court of New Jersey
210 S. Broad Street, 5th Floor
P.O. Box 8068
Trenton, New Jersey 08650-0068

Re: I/M/O MIIX Insurance Company in Rehabilitation
Docket No. C-086-04

Dear Judge Shuster:

Please accept this letter memorandum in lieu of brief filed on behalf of the Commissioner of the Department of Banking and Insurance ("Commissioner; DOBI"). The Commissioner seeks the Court's approval of this application to place MIIX Insurance Company ("MIIX") into liquidation.

As the Court is aware, MIIX was placed into rehabilitation by order dated September 28, 2004. In a largely successful attempt to ease the burden for injured plaintiffs and MIIX's insureds, DOBI and the rehabilitation staff proposed a settlement protocol which the Court approved on August 17, 2005. As a result of the successful cooperation among all parties



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involved in the medical malpractice cases against MIIX insureds, to date, MIIX assets have been sufficient to cover all claims, including adverse verdicts.

Nonetheless, the Commissioner and the rehabilitation staff have closely monitored MIIX' assets and projected liabilities. At year end 2007, it became apparent that the outstanding claims have the potential to "break the bank." Thus, the Commissioner has filed this petition and Order to Show Cause seeking to liquidate MIIX' remaining assets and claims. The order of liquidation, which contains a declaration of insolvency, will permit the remaining claimants to recover from state guaranty funds pursuant to the statutory guidelines for those funds. Failing to act now will lead to the inequitable result that those claimants who have not yet settled or gone to trial will have no money available from MIIX. Further, liquidating the MIIX rehabilitation estate now will permit the transfer of case reserves to the various guaranty funds thus easing the ultimate burden on each state's fund. Thus, liquidation is necessary for the protection of MIIX creditors and claimants.

The Order to Show Cause contains one provision that we wish to bring to the Court's attention. The proposed Order to Show Cause provides for temporary injunctive relief which includes a stay of litigation. The Uniform Insurers Liquidation Act ("ULA") provides that the Court may issue such injunctions as are necessary

to prevent interference with the liquidation proceeding, waste of the carrier's assets or the creation of preferences. N.J.S.A. 17:30C-5(b). Imposing the stay until the return date of the Order to Show Cause is in the public interest because it maintains the status quo of MIIX. If an order of liquidation is entered, the responsibility for litigating matters involving MIIX insureds will transfer to the various state guarantee associations. In New Jersey, NJPLIGA is then entitled to apply for an additional stay to permit it to assume control of, and prepare a proper defense of, pending causes of action. N.J.S.A. 17:30A-18. In light of NJPLIGA's interests, it is appropriate to extend the stay of pending matters until NJPLIGA is prepared to assume control of those matters.

The Commissioner is seeking a declaration that MIIX is insolvent and Court approval to liquidate MIIX on the grounds set forth in N.J.S.A. 17:30C-6 and 8. The Commissioner has determined that MIIX is insolvent as defined in 17:30C-1a. The Commissioner has also concluded, in light of the magnitude of MIIX' insolvency, that further attempts to rehabilitate MIIX will be useless and substantially increase the risk to policyholders, creditors, and the public. N.J.S.A. 17:30C-7(b).

The Commissioner may petition the Superior Court for an Order of Liquidation "[i]f at any time the Commissioner deems that further efforts to rehabilitate the insurer would be useless... ."

N.J.S.A. 17:30C-7(b). Additionally, the Commissioner may apply for an order directing liquidation if the insurer is "impaired or insolvent" or "is found ... to be in such condition that its further transaction of business will be hazardous to its policyholders, or its stockholders, or to its creditors, or the public." N.J.S.A. 17:30C-8; N.J.S.A. 17:30C-6(a) and (f).

The Commissioner's decision to liquidate an insurance carrier is entitled to substantial deference, because of the specialized nature of insurance generally, and more particularly here, due to the financial expertise of the Department that is utilized in making this type of decision. Matter of Aetna, 248 N.J. Super. 367, 376 (App. Div.), certif. denied, 126 N.J. 385 (1991), cert. denied, 502 U.S. 1121, 112 S. Ct. 1224, 117 L. Ed. 2d 476 (1992); IFA Ins. Co. v. New Jersey Dept. of Ins., 195 N.J. Super. 200, 208 (App. Div.), certif. denied, 99 N.J. 218 (1984). As explained by the Appellate Division in Fortunato v. N.J. Life Ins. Co., 254 N.J. Super. 420, 426-427 (App. Div. 1991), because an insurance company's financial solvency necessarily threatens the justifiable interests of policyholders, creditors and the public, the Commissioner's "informed prediction" regarding the company's financial condition should be upheld if it is neither "arbitrary nor unreasonable."

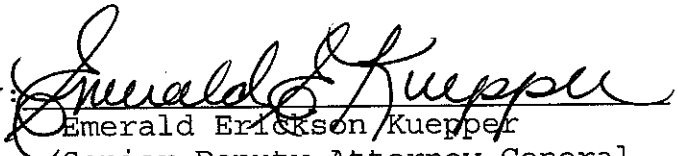
Here, the Commissioner has succeeded in resolving many of the outstanding claims filed against MIIX insureds. What could not

be predicted, however, is the number of claims which continue to be filed during the rehabilitation. The seriousness and number of these unresolved claims leads the Commissioner to the decision to seek liquidation. There are simply not enough remaining assets to assure a solvent runoff in rehabilitation.

Therefore, for all the foregoing reasons, the Commissioner requests that the Court place MIIX into liquidation.

Respectfully submitted,

ANNE MILGRAM
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By: 
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Enclosures
c: All persons on attached list