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April 27, 2012

Hon. Paul Innes, P.J. Ch. Div.  
Superior Court of New Jersey, Chancery Division  
Mercer County Civil Courts Building  
175 South Broad Street  
Trenton, NJ 08650

Re: Comm'r. v. Garden State Indemnity Company, Inc.  
Docket No. MER-C-  
Letter Brief in support of Petition for Liquidation

Dear Judge Innes:

Please accept this letter brief in support of the Petition for Liquidation of Garden State Indemnity Company, Inc. ("GSIC") filed by the Commissioner of Banking and Insurance ("Commissioner"). Along with this letter brief, the Commissioner relies on the Certification of Acting Assistant Commissioner Raymond K. Conover. We are also submitting to the court a form of Order to Show Cause, Verified Complaint, and a form of Order of Liquidation. As set forth below, due to the increasingly

rapid deterioration of GSIC's financial condition and resulting insolvency, the Commissioner respectfully requests that Your Honor consider the petition on an expedited basis.

GSIC is a New Jersey-domiciled insurance company. As set forth in the accompanying Certifications, the Commissioner has determined that GSIC is insolvent and its financial condition is such that it cannot be rehabilitated and that any efforts to rehabilitate GSIC would be useless. The Commissioner therefore respectfully requests that the court grant this petition and enter the Order to Show Cause and, ultimately, an Order of Liquidation.

ARGUMENT

**BOTH AN IMMEDIATE DECLARATION THAT GSIC IS  
INSOLVENT AND ENTRY OF THE ORDER OF LIQUIDATION  
ARE NECESSARY TO PRESERVE GSIC'S ASSETS AND TO  
PROTECT THE PUBLIC INTEREST.**

N.J.S.A. 17:30C-1 et seq., authorizes the Commissioner to petition the Superior Court for an Order of Liquidation if an insurer is insolvent, regardless of whether or not an Order of Rehabilitation has been previously entered. N.J.S.A. 17:30C-8b. The Commissioner may also apply for an Order of Liquidation upon any of the grounds for rehabilitation under N.J.S.A. 17:30C-6. Therefore, liquidation is appropriate if an insurer is "impaired or insolvent," N.J.S.A. 17:30C-6A; or "is found ... to be in such condition that its further transaction of business will be

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hazardous to its policyholders, or to its stockholders, or to its creditors, or to the public," N.J.S.A. 17:30C-6f; or "[h]as failed to submit its books, records, accounts or affairs to the reasonable examination of the [C]ommissioner," N.J.S.A. 17:30C-6b; or "[h]as willfully violated ... any law of this State." N.J.S.A. 17:30C-6g.

Based on the information set forth in GSIC's 2010 and 2011 annual statements, GSIC has failed to maintain a minimum capital and surplus of \$2,000,000 as required by N.J.S.A. 17:17-6. Certification of Raymond K. Conover ("Conover Cert."), ¶¶8, 7 - 10, and Exhibits A and B. N.J.S.A. 17:30C-1a defines "impairment or insolvency" to mean "... the capital of a stock insurer ... shall be deemed to be impaired and the insurer shall be deemed to be insolvent, when such insurer is not possessed of assets at least equal to all liabilities and required reserves together with its total issued and outstanding capital stock ...." As of December 31, 2011, GSIC's surplus is (\$490,949). Conover Cert., ¶10, and Exhibit B. GSIC's assets are less than equal to its liabilities and required reserves together with its statutorily required minimum capital and surplus. Accordingly, GSIC is insolvent pursuant to N.J.S.A. 17:30C-1a.

Further, GSIC reported Net Operating Losses of (\$1,435,848) and (\$2,192,730) for the twelve-month periods ending December 31, 2010, and December 31, 2011, respectively. Conover

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Cert., ¶¶11 - 17, and Exhibits C and D. Based upon these findings as well as GSIC's failure to maintain its statutorily required minimum capital and surplus, the Commissioner has determined, pursuant to N.J.S.A. 17:30C-6f and N.J.A.C. 11:2-27.3(a), that GSIC is in a hazardous financial condition that its further transaction of business will be hazardous to its policyholders, or to its stockholders, or to its creditors, or to the public. Conover Cert., ¶¶18 - 22.

All insurers are required to submit to the Commissioner an annual audit by an independent certified public accountant on or before June 1 for the prior year ending December 31. N.J.A.C. 11:2-26.4(a). Despite having been given an extension to September 1, 2011, to file its 2010 annual audit, GSIC has failed to do so, in violation of N.J.S.A. 17:30C-6b and -6g. Conover Cert., ¶¶23 - 29.

The Commissioner is authorized to seek an order of liquidation with respect to an insurer regardless of whether a prior order of rehabilitation has been issued regarding that insurer. N.J.S.A. 17:30C-8. The Commissioner has determined, in light of the accelerating decline of GSIC's financial condition as described above, that any attempt to rehabilitate GSIC would be useless. Conover Cert., ¶43. Accordingly, liquidation is necessary for the protection of GSIC's debtors and of GSIC's other claimants. An Order of Liquidation will allow GSIC to run

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off its business and prevent further accumulation of debts. Therefore, the Commissioner requests that this court immediately declare GSIC to be insolvent and issue an Order of Liquidation.

The enclosed form of Order to Show Cause also provides for the temporary injunctive relief of imposing a stay on litigation involving GSIC. The court is authorized to 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-5b. Extending the stay until the return date of the Order to Show Cause is in the public interest because it maintains the status quo. If an Order of Liquidation is entered, the responsibility for litigating matters involving GSIC insureds will pass to the New Jersey Property-Liability Insurance Guaranty Association ("PLIGA"), which is then entitled to apply for an additional stay to permit it to prepare to defend pending causes of action. N.J.S.A. 17:30A-18. In light of PLIGA's interest, it is appropriate to extend the stay of pending matters until PLIGA is prepared to assume control of those matters.

An immediate declaration that GSIC is insolvent and court approval to liquidate GSIC are consistent with the grounds set forth in N.J.S.A. 17:30C-6 and -8. Furthermore, the Commissioner's decision to liquidate an insurance carrier is entitled to substantial deference because of the specialized

nature of insurance generally and specifically, as here, in light of the Commissioner's financial expertise in making this type of decision. In re Assignment of Exposures to the Aetna Cas. & Sur. Co., 248 N.J. Super. 367, 376 (App. Div.), certif. denied, 126 N.J. 385 (1991), cert. denied, 502 U.S. 1121, 112 S. Ct. 1244, 117 L. Ed. 2d 476 (1992); IFA Ins. Co. v. N.J. Dept. of Ins., 195 N.J. Super. 200, 208 (App. Div.), certif. denied, 99 N.J. 218 (1984). The Appellate Division reasoned in Fortunato v. N.J. Life Ins. Co., 254 N.J. Super. 420, 426-27 (App. Div. 1991), that 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."

The Commissioner's decision to petition this court for liquidation is reasonable and was made for three reasons. First, GSIC is insolvent. The magnitude and speed of the deterioration of GSIC's financial condition supports the Commissioner's determination that any effort to rehabilitate GSIC will be futile. GSIC has not demonstrated the existence of any reasonable possibility of a solvent run-off for GSIC. The additional grounds for liquidation of GSIC's hazardous financial condition and failure to submit the required annual audit further support the Commissioner's decision.

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Second, the Commissioner must protect the interests of the public by petitioning to liquidate the company. Prompt liquidation of GSIC will allow the company to be run off in an orderly manner that will both protect claimants and maximize assets for potential creditors.

Finally, the public interest strongly favors granting the Commissioner's Petition for Liquidation. The Commissioner is charged with protecting the interests of GSIC's policyholders, claimants, and creditors, as well as those of the general public. Liquidation is necessary to protect the interests of policyholders and claimants who would rely on an orderly run-off to fund outstanding claims. The public interest will not be served by allowing GSIC to continue to lose money.

For all of the foregoing reasons, the Commissioner respectfully requests that the court approve the Commissioner's petition to liquidate GSIC.

Respectfully submitted,

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By: 

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