

**IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF MISSISSIPPI**

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MISSISSIPPI INSURANCE DEPARTMENT, by and through MICHAEL J. CHANEY,  
COMMISSIONER OF INSURANCE FOR THE STATE OF MISSISSIPPI,

PLAINTIFF,

vs.

CASE NO. 1:13-CV-379-LG-JMR

UNITED STATES DEPARTMENT OF HOMELAND SECURITY; RANDY BEERS, in his  
official capacity as the Secretary of the United States Department of Homeland Security;  
UNITED STATES FEDERAL EMERGENCY MANAGEMENT AGENCY; W. CRAIG  
FUGATE, in his official capacity as the Administrator Of the United States Federal  
Emergency Management Agency,

DEFENDANTS.

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**MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE**

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COMES NOW, the South Carolina Department of Insurance (Department) and  
moves this Court for an order permitting it to appear in this matter as amicus curiae for  
the purpose of filing a memorandum in support of Plaintiff MISSISSIPPI INSURANCE  
DEPARTMENT, by and through MICHAEL J. CHANEY, COMMISSIONER OF  
INSURANCE FOR THE STATE OF MISSISSIPPI, in connection with the filing of  
Plaintiff's Motion for Stay or, in the Alternative, Preliminary Injunction filed on October  
10, 2013 and the hearing on the same. The SCDOI has an interest in the outcome of  
Plaintiff's Motion and would respectfully request this Court allow it to file on the issue of  
the necessity to obtain various studies and other assistance, and thus, full and proper  
compliance with the mandates of 112 PL 141, specifically 112 PL 141 § 100221, 112 PL 141  
§ 100231, 112 PL 141 § 100233, 112 PL 141 § 100235 and 112 PL 141 § 100236.1.

## **GROUND FOR RELIEF**

The Department is an agency in the executive branch of the South Carolina government, with regulatory responsibility for over 1,450 insurance companies and over 50,000 agents, brokers, adjusters, appraisers, and bail bondsmen. The DOI's mission is to protect insurance consumers, the public interest, and the insurance marketplace by ensuring the solvency of insurers; by enforcing and implementing the insurance laws of South Carolina; and by regulating the insurance industry in an efficient, courteous, responsive, fair, and equitable manner.

Central to its mission to protect consumers is the statutory responsibility for regulating the stability and solvency of the South Carolina insurance marketplace. Flood insurance, while not directly regulated by this Department, impacts, and other insurance coverage and is often required as a pre-requisite to, other types of property insurance coverage in South Carolina's property insurance marketplace. Insurers and the South Carolina Wind and Hail Underwriting Association, South Carolina's residual market, condition eligibility for, and the ability to secure, replacement cost insurance coverage on having in place a valid flood insurance policy.

South Carolina ranks sixth nationally in the number of flood insurance policies that are in force in this state. The Department is already receiving anecdotal reports of consumers who have received significant increases in flood insurance policies or who have not been able to purchase property because the flood insurance premium was not affordable. The effect of the Biggert-Waters Flood Insurance Reform and Modernization Act of 2012, H.R. 4348, (Biggert-Waters) will be significant in South

Carolina for pre-FIRM properties and grandfathered policies. If the implementation of the National Flood Insurance Program, 42 U.S.C. § 4001, et seq., (“NFIP”) as amended by Biggert-Waters proceeds without a full and proper evaluation and examination of the impact to policyholders and the affordability of flood insurance policies, then the implementation will have serious national economic impacts on homeowners, business owners, and other persons with properties located in a flood hazard zone and the coastal communities of this state. The implementation is proceeding without the benefit of important determinations necessary to continue the stated purpose of the NFIP – to make “flood insurance coverage available on reasonable terms and conditions to persons who have need for such protection.” Like Mississippi, South Carolina has coastal property exposure. The Department understands the issues involved and believes that its perspective and the experiences of its citizens may help make a significant contribution to the resolution of the legal issues in dispute.

#### **REASON AN AMICUS FILING SHOULD BE GRANTED**

1. The Department, like the Mississippi Insurance Department is responsible for regulating the insurance market within South Carolina. Taking action to ensure that compulsory insurance products are affordable and available is central to the Department’s core mission involving the regulation of insurance markets. Flood insurance coverage is required by some South Carolina insurers and the South Carolina Wind and Hail Underwriting Association (Wind Pool) as a prerequisite for replacement cost and other property insurance coverage. Some insurers require flood insurance to insure residential and commercial risks which are located in flood hazard zones. Banking institutions, federal laws, and federal regulations require that risks insured for

wind and hail perils also require the risk to be insured with a flood insurance policy. Consequently, the Department believes that its citizens will be impacted by the outcome of this claim and therefore has a significant interest in it.

2. South Carolina's residual property insurance market has effectively securitized its exposure to hurricane and other wind-related risks. The Wind Pool cedes a significant portion of its exposure to reinsurers. Flood insurance is requested by reinsurers on properties located in flood hazard areas. This factors into the resulting premiums paid by the Wind Pool for reinsurance. Without flood insurance on properties insured by the Wind Pool within flood zones, the ability to obtain reinsurance and the price to be paid for any reinsurance will be drastically affected and the prices elevated if reinsurance is available at all. Of course, this in turn potentially results in higher premiums paid by Wind Pool policyholders.

3. Without reasonably priced flood insurance, private and voluntary insurers will have a continued disincentive to write coverage on risks along South Carolina's coast. This will also affect the type of coverage South Carolinians may be able to secure. Some insurers will not offer wind and hail insurance coverage in the coastal communities of this state without a valid flood insurance policy. This will impact insurers' decisions to continue to write property insurance with wind and hail insurance coverage in South Carolina's coastal communities.

### **CONSULTATION WITH THE PARTIES**

Prior to filing this motion, counsel for the Department contacted counsel for Plaintiff in this action. Plaintiff not only consents, but encourages the filing of Department's brief regarding Plaintiff's Motion for Stay or, in the Alternative, Preliminary Injunction filed on October 10, 2013. By this filing, counsel also seeks the

consent of Defendants in allowing the Department to file an Amicus Curiae brief. Participation by the Department as amicus curiae will not delay or complicate these proceedings in any manner and will be of benefit to the Court and the remaining parties in fully understanding the national significance of the issues involved. The Department will provide information about the effect of proceeding with the implementation of Biggert-Waters prior to appropriate studies being made. This information can assist this Court in crafting a fair and equitable remedy. It will also aid the Court in ruling on the motion and relief requested by Plaintiff on behalf of the citizens of Mississippi as well as other states who reside in flood hazard areas.

WHEREFORE, the South Carolina Department of Insurance respectfully requests this Court enter its Order permitting it to appear in this matter as amicus curiae.

THIS, the first day of November, 2013.

Respectfully submitted,

South Carolina Department of Insurance

/s/ James H. Heidelberg  
JAMES H. HEIDELBERG

Heidelberg, Steinberger,  
Colmer & Burrow, P.A.  
P.O. Box 1407  
Pascagoula, MS 39568  
P: 228-762-8021  
F: 228-762-7589  
[jheidelberg@hscbpa.com](mailto:jheidelberg@hscbpa.com)

Gwendolyn F. McGriff  
South Carolina Department of Insurance  
Post Office Box 100105  
Columbia, South Carolina 29202  
(803) 737-6200  
gmcgriff@doi.sc.gov  
(Pending pro hac vice admission)

Rachel Y. Harper  
South Carolina Department of Insurance  
Post Office Box 100105  
Columbia, South Carolina 29202  
(803) 737-6200  
rharper@doi.sc.gov  
(Pending pro hac vice admission)

Dustin Stimson  
South Carolina Department of Insurance  
Post Office Box 100105  
Columbia, South Carolina 29202  
(803) 737-6200  
[dstimson@doi.sc.gov](mailto:dstimson@doi.sc.gov)  
(Pending pro hac vice admission)

ATTORNEYS FOR AMICUS CURIAE Department

**CERTIFICATE OF SERVICE**

I, James H. Heidelberg, of the firm of Heidelberg, Steinberger, Colmer & Burrow, P.A., do hereby certify that I electronically filed the foregoing *South Carolina Department of Insurance's Motion for Leave to File Brief as Amicus Curiae* with the Clerk of the Court using the ECF system to:

All counsel of record registered with the ECF system.

This the 1st day of November, 2013.

*s/James H. Heidelberg*

JAMES H. HEIDELBERG

MISSISSIPPI BAR NO. 2212