

FIRST CIRCUIT COURT
STATE OF HAWAII
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Insurance Commissioner of the State of Hawaii

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

J.P. SCHMIDT, in his capacity as Insurance
Commissioner of the State of Hawaii,

Petitioner,

vs.

PRIMEGUARD INSURANCE COMPANY,
INC., A RISK RETENTION GROUP,

Respondent.

) S.P. No. 05-1-0443 (RAN)
) (Special Proceedings)
)
)
) LIQUIDATOR'S MOTION FOR APPROVAL
) OF RECOMMENDATIONS REGARDING
) FILED CLAIMS; MEMORANDUM IN
) SUPPORT OF MOTION; DECLARATION OF
) PAUL S.K. YUEN; EXHIBITS A-F; NOTICE
) OF HEARING AND CERTIFICATE OF
) SERVICE
)
)
) HEARING
)
) Date: APR 27 2010
) Time: 10:00 A.M.
) Judge: Hon. Rhonda A. Nishimura
)
)
) NO TRIAL DATE SET
)
)
)

LIQUIDATOR'S MOTION FOR APPROVAL OF
RECOMMENDATIONS REGARDING FILED CLAIMS

Petitioner J.P. Schmidt, Insurance Commissioner of the State of Hawaii in his capacity as
Liquidator of PrimeGuard Insurance Company, First Assured Warranty Corporation,

1SourceAutoWarranty.com, Inc., and Warrantee Wise, Inc. (collectively the "PrimeGuard

Companies”), in Liquidation (the “Petitioner” or the “Liquidator”), by and through his undersigned counsel, hereby moves this Court for an Order approving his recommendations concerning the filed claims and certain objections thereto submitted against the PrimeGuard Estate (the “Motion”) and as grounds therefore states as follows.

This Motion is brought pursuant to Rule 7 of the Hawaii Rules of Civil Procedure and HAW. REV. STAT. § 431:15-333, and is supported by the attached Memorandum in Support of Motion, Declaration of Special Deputy Liquidator Paul Yuen, Exhibits "A-F" and any other evidence that may be presented at the hearing on this Motion.

Dated: Honolulu, Hawaii, March 16, 2010.

KOBAYASHI, SUGITA & GODA



CLIFFORD K. HIGA
WENDELL H. FUJI
LANSON K. KUPAU

Attorneys for Plaintiff J.P. SCHMIDT, in his capacity as Insurance Commissioner of the State of Hawaii and Liquidator of PrimeGuard Insurance Company, in Liquidation

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

J.P. SCHMIDT, in his capacity as Insurance Commissioner of the State of Hawaii,)	S.P. No. 05-1-0443 (RAN)
)	(Special Proceedings)
)	
Petitioner,)	
)	MEMORANDUM IN SUPPORT OF MOTION
vs.)	
)	
PRIMEGUARD INSURANCE COMPANY, INC., A RISK RETENTION GROUP,)	
)	
)	
Respondent.)	
)	
)	
)	

MEMORANDUM IN SUPPORT OF MOTION

I. BACKGROUND – LIQUIDATION OF PRIMEGUARD AND AFFILIATES

1. Respondent PrimeGuard Insurance Company, Inc., (“PrimeGuard”) is a Hawaii domiciled insurance company organized as a Risk Retention Group. Although domiciled in Hawaii, PrimeGuard’s offices were located in Colorado and shared with the offices of affiliates First Assured Warranty Company, Inc., 1SourceAuto Warranty.com, Inc., and Warrantee Wise, Inc. (collectively "First Assured").¹

2. J.P. Schmidt, in his capacity as Insurance Commissioner for the State of Hawaii (the "Commissioner") initiated formal proceedings against PrimeGuard in this Court. On November 14, 2005, this Court entered a Seizure Order regarding PrimeGuard. Thereafter, on December 19, 2005, the Court placed PrimeGuard under an Order of Liquidation with a finding

¹ When referred to collectively, PrimeGuard, First Assured and the affiliates are referred to as the "PrimeGuard Companies."

of insolvency (the "Liquidation Proceeding") and appointed the Commissioner as Liquidator (hereinafter the "Liquidator").

3. On May 23, 2006, the Liquidator filed a Motion for Leave to Add First Assured Warranty Corporation and 1SourceAutoWarranty.com, Inc. as Respondents (the "Consolidation Motion") in this Proceeding to which First Assured objected. A hearing on the Liquidator's Consolidation Motion was scheduled on June 19, 2006.

4. While the motion to add the affiliates was pending, on June 6, 2006, this Court entered an Order Granting Liquidator's Motion for Approval of Notice, Service and Claim Submittal Procedures and Claim Response Deadline Filed May 4, 2006 (the "Claims Submittal Order"). The Claims Submittal Order applied to known creditors of PrimeGuard, First Assured, and their affiliates. It approved the issuance of a Notice of Liquidation Order and a Claim Response Form, and set a Claim Response Deadline of November 30, 2006, as the bar date for claims to be filed in the Liquidation Proceeding, *nunc pro tunc* May 4, 2006. The Claims Submittal Order also specifically provided that "any claims received by the Liquidator after the stated Deadline, with the exception of those provided for in the Liquidation Act, shall be and is forever barred from receiving a distribution from the PrimeGuard Estate." *Claim Submittal Order*, p. 2, ¶ 3.

5. On June 16, 2006, First Assured (including its affiliates) filed a voluntary petition for relief under Chapter 11, Title 11, United States Code, in the United States Bankruptcy Court for the District of Colorado (the "Bankruptcy Court"), Case No 06-13669 MER (the "Bankruptcy Case").

6. In the Bankruptcy Case, the Liquidator filed motions seeking, *inter alia*, relief from the automatic stay for the purpose of including First Assured in the Liquidation Proceeding,

dismissal of the Bankruptcy Case and requesting a waiver of certain turnover provisions under the Bankruptcy Code.

7. On March 6, 2007, the Bankruptcy Court denied each of the Liquidator's requests. Thereafter, the Liquidator initiated an appeal to the United States District Court for the District of Colorado, Civil Action No. 07-cv-00659 (the "Appeal") requesting review of the Bankruptcy Court's denial of the Liquidator's requests.

8. During the pendency of the Appeal, First Assured and the Liquidator, as well as other parties, entered into a Settlement Agreement and Mutual Releases (the "Settlement Agreement") in order to resolve the pending litigation. The Settlement Agreement provided in pertinent part:

- a) First Assured would cease prosecution of its Plan of Reorganization and Disclosure Statement and seek dismissal of the Bankruptcy Case;
- b) All properties of First Assured's bankruptcy estate, including any and all assets of any type in which First Assured had, asserted, or might assert an ownership interest would be under the sole and exclusive jurisdiction of this Court and that this Court would have sole and exclusive jurisdiction over all of First Assured's property which would be administered and liquidated as part of the Liquidation Proceeding; and
- c) Most, if not all, claims would be addressed and administered in the Liquidation Proceeding.

9. On May 15, 2008, in accordance with the parties' request and the specific terms of the Settlement Agreement, the Bankruptcy Court entered its Order Granting Motion for Order Approving: (I) Compromise and Controversy with the Insurance Commissioner for the State of Hawaii; and (II) Conditional Dismissal of the Bankruptcy Case. On May 30, 2008, the Bankruptcy Court dismissed the Bankruptcy Case and on June 4, 2008, the Appeal was dismissed.

10. On May 22, 2008, the Liquidator filed his Motion for Leave to Add First Assured Warranty Corporation, 1SourceAutoWarranty.com, Inc. and Warrantee Wise, Inc. as Respondents and Placing Them Under a Supplemental Order of Liquidation. (the "Motion for Leave"). No opposition was filed to the Motion for Leave and on July 17, 2008, this Court entered a Supplemental Order of Liquidation which effectively added First Assured Warranty Corporation, 1SourceAutoWarranty.com, Inc. and Warrantee Wise, Inc. as Respondents to the Liquidation Proceeding (together hereinafter referred to as "First Assured").

11. As part of the Settlement Agreement entered into between First Assured and the Liquidator, the parties agreed that all claims that had been filed in the Bankruptcy Case would be administered in the Liquidation Proceeding. *Settlement Agreement*, pp. 6-9. Specifically, the parties agreed that “[s]ubject to the Liquidation Court’s approval of [the] Agreement, (i) all First Assured creditors with claims arising under vehicle service contracts and who have filed a proof of claim in the Bankruptcy Case ("VSC Claims," individually referred to as a “VSC Claim”), regardless of whether such VSC Claims have been filed in the PrimeGuard Liquidation, shall be treated as if such VSC Claims were timely filed on an appropriate proof of claim form in the PrimeGuard Liquidation; and (ii) the Liquidator shall treat all such VSC Claims the same as similarly situated claims timely filed with the Liquidator or in the PrimeGuard Liquidation on proper forms. *Settlement Agreement*, p. 7 ¶ 5.3.

12. The Settlement Agreement also provided for the administration of any “Allowed Unsecured Trade Creditors,” “Secured Claims” and “Tax Claims” as defined in the Settlement Agreement. Essentially, the Settlement Agreement provided that with the exception of Tax Claims, all other claims not administered in the Bankruptcy Case would be addressed and administered in this Liquidation Proceeding.

II. REPORT: CLAIMS FILED AND LIQUIDATOR RECOMMENDATION

A. Reviewing and Reporting Claims Under Statutory Priority System – Class 2 Claims, Late Claims and All Other Claims

Section 431:15-333, HAW. REV. STAT., grants the Liquidator the authority to compromise and negotiate the amount of claims recommended to the Court and requires the Liquidator to submit recommendations once the claims process is complete. Specifically, the Liquidator is required to "review all claims duly filed in the liquidation and shall make such further investigation as the liquidator shall deem necessary." HAW. REV. STAT. § 431:15-333. As part of that process, the Liquidator is authorized to "compound, compromise, or in any other manner negotiate the amount for which claims will be recommended to the court." *Id.* The Liquidator is then required to "present to the court a report of the claims against the insurer with the liquidator's recommendations." *Id.*

In developing this recommendation, the Liquidator has followed the requirements of Section 431:15-332, HAW. REV. STAT., which sets forth the priority of distribution of claims from an insurer's estate. Section 332 organizes claims into the following classes.

- (1) Class 1 - Costs and expenses of administration;
- (2) Class 2 – Claims for benefits under policies – i.e. claims of the VSC Holders;
- (3) Class 3 – Claims of the federal government;
- (4) Class 4 – Debts due to employees;
- (5) Class 5 – Claims of general creditors.
- (6) Class 6 – Claims of any state or local government;
- (7) Class 7 – Late filed claims;
- (8) Class 8 – Surplus or contribution notes;

(9) Class 9 – the claims of shareholders or other owners.

Utilizing the required classes, for purposes of its recommendation, the Liquidator is organizing the claims into three categories – the Class 2 Claims (VSC Holders), Late Claims (Class 7), and All Other Claims (Classes 3 through 9 – excluding Class 7).

As of the date of this Motion, more than 7,200 claims have been filed against the PrimeGuard Companies. (Yuen Declaration, Par. 3.) The Liquidator has categorized those claims as follows:

Class 2 Claims filed by VSC Holders (See Exhibit D)

Number of Claims: 7,084

Amount of Claims Asserted by Claimants: \$12,311,842.27:

Classes 3 through 9 Claims – All Other claims (See Exhibit E)

Number of Claims: 127

Amount of Claims Asserted by Claimants: \$3,331,427.80

Class 7 Claims – Late Claims (See Exhibit F)

Amount of Claims: \$17,282,528.85

Exhibits D, E and F, along with Exhibits C-1 through C-5, contain a detailed listing of claimants, their addresses and the related claim information. These exhibits contain confidential information related to the personal identity of the claimants. They are being filed with this Court under seal. In the event that any person with standing desires to review the exhibits for purposes related to determining and enforcing rights that are affected by the Liquidator's recommendation, the Liquidator is prepared to make such information available after such person's execution of a confidentiality agreement and at cost of the requesting person.

As is evident from Exhibit D, for Class 2 Claims, in addition to the priority level, the Liquidator is recommending a specific claim amount with respect to each claimant. There are not sufficient assets to pay creditors below Class 2. (Yuen Declaration, Par. 6.) As a result, the Liquidator is recommending the priority class level of each such creditor and the general aggregate amount of claims asserted in those classes at this time. However, the Liquidator's recommendation defers determining specific claim amounts for each creditor in classes lower than Class 2 unless and until it appears that there are sufficient assets to make a distribution beyond Class 2 Claims.

After the Liquidator's recommendation is filed, HAW. REV. STAT. § 431:15-333(b) grants this Court discretion to approve, disapprove or modify the Liquidator's recommendations (collectively referred to as the "Liquidator's Recommendation"). However, if the Court takes no action on the Liquidator's Recommendation for a period of sixty (60) days following his submittal, then the Liquidator's Recommendation, as described in fuller detail below, shall be deemed allowed. *Id.*

1. Class 2 Claims – Calculations of Refunds and Repair Claims

For the Class 2 warranty claims, the Liquidator applied a methodology consistent with the warranty contract and with the company's prior practices to determine the recommended claim amount. The warranties were terminated consistent with this Court's order as of January 19, 2006. The duration of the contract was then converted to the number of days, identifying the number of days in-force along with the number of days remaining after termination. The premium was then pro-rated to arrive at a prorated refund amount. In those states where the law allows the amount of any claims to be subtracted from a prorated premium refund, the claims

were accounted for. In the states where the law does not allow the claims to be subtracted, the amount of repairs was not applied to the pro rata refund amount. (Yuen Declaration, Par. 10.)

One issue that became apparent in the claim process is the practice referred to as a dealer mark-up which occurred when the warranties were sold by car dealers and the dealers charged an amount in excess of the premium due to the PrimeGuard Companies (referred to as "dealer markup"). The dealer kept any excess and only paid the amount of the actual premium to the PrimeGuard Companies. The amount of refund calculated as part of the claims process is based on the amount of premium received by the PrimeGuard Companies and not based on the amount paid to the dealer. (Yuen Declaration, Par. 11.)

The Liquidator applied this same approach to all VSCs so that a consistent approach and calculation was utilized for all VSC claims.

2. Other Claims

The other claims being recommended by the Liquidator include (i) the Late Claims, which are Class 7 claims, and (ii) all other claims in Classes 3 through 9 (excluding the Class 7 Claims). With respect to all the other claims, the Liquidator is recommending that the priority level be identified but that there be no determination as to the specific claim amount unless and until there are sufficient assets to make a distribution to such level. The recommended approach permits the Liquidator to confirm the identity of the creditors in the specific statutory classes while avoiding expending limited assets determining and resolving claim amounts unless and until there are sufficient assets to pay creditors beyond Class 2.

The Late Claims include liabilities identified on the books and records of First Assured and PrimeGuard that have been reported on a quarterly basis to this Court but for which timely claims were not filed along with other untimely claims. While the Liquidator has knowledge of

these claims, the claimants have failed to comply with the statutory requirements for filing claims on or before the claims deadline. As a result, the Liquidator recommends categorizing these claims as Class 7 Late Filed Claims. As such, no distributions will be made to these claims unless and until all Claims in Classes 3 through 6 are first paid in full. At this time, there does not appear to be sufficient estate assets to make any payment to Class 7 claims.

B. Notice Given to Claimants and Objections Received

Pursuant to HAW. REV. STAT. § 431:15-329, the Liquidator sent notices to claimants that filed claims identifying the Liquidator's final determination regarding their claims and presenting them with an opportunity to object to the recommendation. (Yuen Declaration, Par. 7.)

1. Notice to VSC Holders

A notice of determination substantially in the form of Exhibit A was sent to each claimant that filed a claim for benefits under a VSC. (Yuen Declaration, Par. 8.) The notice identified the "Amount Requested by Claimant" and the "Approved and Admitted Amount" as calculated by the Liquidator. (Exhibit A.)

2. Notice to All Other Creditors

A notice of determination substantially in the form of Exhibit B was sent to each claimant that had not asserted a claim under a VSC. (Yuen Declaration, Par. 9.) The notice identified the priority class of the claimant and explained that since no assets were available to make a distribution beyond Class 2, that the determination of the amount of the claim was being deferred.

3. Objections from Claimants

In response to the notices, the Liquidator received 60 objections, which are organized and identified in Exhibits C-1 through C-5. (Yuen Declaration, Par. 13.)

Exhibit C-1 – Claims Revised After Objection

As set forth in Exhibit C-1, the Liquidator revised claims after receiving 18 objections with the total amount of claims being requested by the objecting claimants equal to \$34,209.55. After receipt and review of the objection, the Liquidator adjusted the claim amount to a total of \$18,575.19 and sent a revised Notice of Determination using the same format from Exhibits A and/or B. No claimant filed an objection in response to the revised Notice of Determination. (Yuen Declaration, Par. 13.a.) Because no objection was filed to the second Notice of Determination, the Liquidator believes that no action may be necessary. However, to the extent any action is necessary, the Liquidator recommends denial of the objection to the first Notice of Determination.

Exhibit C-2 – Objections Denied Because Repairs Were Post VSC Termination

As set forth in Exhibit C-2, the Liquidator received 8 objections where claimants were making claims for benefits under warranties for repairs that occurred after the Liquidation of PrimeGuard and after the warranties and insurance policies terminated in accordance with this Court's order. The total amount requested by these 8 claimants is \$17,750.68 while the total amount recommended for approval by the Liquidator for repairs incurred while the warranties were in-force is \$3,337.91. (Yuen Declaration, Par. 13.b.) Claimants making these objections are seeking illegal preferences. The coverage for all claimants under all VSC's terminated on the same date – January 19, 2006. The PrimeGuard Companies are insolvent and there needed to be a cutoff date terminating coverage under the VSCs. Here that date was established by the Court in accordance with the Liquidation Act. The objections seek reimbursement for repairs after that date. The Liquidator recommends denial of these objections.

Exhibit C-3 – Objections Denied Because Objections Seek a Different Method of Refund Calculations

As set forth in Exhibit C-3, the Liquidator received 14 objections from claimants that were requesting to have their refund calculation determined in a manner that contradicted the refund calculation provided for in the warranty and applied to all other claimants. The total amount requested by these 14 claimants was \$20,665.06 while the Liquidator's recommendation for those claims was \$9,126.45. (Yuen Declaration, Par. 13.c.) The claimants making these objections are seeking an illegal preference. In calculating the refund, the Liquidator applied the same approach to all the claimants in accordance with the warranty terms and the applicable state law. It would be patently unfair to apply a different process that results in a higher refund for these 14 objections. Moreover, if a comprehensive change to the refund calculations were made to all VSCs, it would increase the total claim amount but result in no greater recovery because the amount of assets available for distribution at that creditor level would not change. Accordingly, the Liquidator recommends denial of these objections.

Exhibit C-4 – Objections Denied Where Claimants Requested Payment of Refund Amount Without Reduction for Prior Repairs

As set forth in Exhibit C-4, the Liquidator received 8 objections from claimants that disputed that their refund amount should be reduced by the amount of repairs performed. The Liquidator reviewed the claims and confirmed that they were performed. Since the warranty provides for the reduction and the claim involved a state that permits such reductions, the objections were denied. The total amount requested by these 8 claimants was \$17,695.49 while the Liquidator's recommendation for those claims was \$3,090.13. (Yuen Declaration, Par. 13.d.) The Liquidator applied the same approach to calculating refunds for warranty claims, including reducing the claims for benefits paid where state law allows. The claimants making these

objections are not entitled to the preferential treatment they seek. The Liquidator recommends denial of these objections.

Exhibit C-5 – Miscellaneous

As set forth in Exhibit C-5, there are 12 claimants that are categorized as miscellaneous.

Four of the objections are from warranty holders asserting objections that did not fit in the other categories. For example, one claimant wanted to recover for personal anxiety, one challenged whether a claim was paid for, one claim misunderstood the difference between a claim for repairs and a claim for reimbursement and one claim asserts a claim seeking reimbursement for the cost of buying a replacement warranty. The amount requested by those 4 claimant totals \$9,520.42 while the Liquidator's recommended amount totals \$1,434.87. (Yuen Declaration, Par. 13.e.) Because these objections are seeking preferential treatment and calculation of their claim by an approach different than all other warranty claims, the Liquidator recommends denial of these objections.

Two of the objections with claims totaling \$53,765.86 are from Class 5 vendors seeking a higher priority for unpaid expenses and/or commission checks. The Liquidator denied their request to be classified at a higher priority. (Yuen Declaration, Par. 13.e.) While these creditors may have valid claims, they are not entitled to preferential treatment sought in the form of a higher priority level. The PrimeGuard Companies' records do not support treating either of these creditors as employees. Accordingly, the Liquidator recommends denial of their objections.

Six of the objections with claims totaling \$8,706.70 are late-filed claims that are included in the Class 7 listing of late-filed claims. The objections are based on an argument that the claims were not, or should not be considered, untimely filed. The Liquidator has found no

evidence that any of those seven claimants filed timely. (Yuen Declaration, Par. 13.e.)

Accordingly, the Liquidator recommends denial of these objections.

In response to the objections identified in Exhibits C-1 through C-5, the Liquidator has not altered the denial of the objection (with the exception of the initial revision for claims identified in Exhibit C-1). As a result, pursuant to HAW. REV. STAT. § 431:15-329, the Liquidator is requesting that the Court schedule a hearing on the objections as soon as practicable. Once that hearing is set, the Liquidator will give notice of the hearing by first class mail to each claimant identified in Exhibits C-1 through C-5, to such claimant's attorney, if any was identified, not less than ten nor more than thirty days before the date of the hearing. In addition, to provide notice to all other persons who might be affected, the Liquidator will post on its web site notice of the hearing date and time. (Yuen Declaration, Par. 13.f.)

C. Liquidator's Recommendation for Class 2 Claims

The Liquidator requests that the Court enter an Order approving the Liquidator's recommendation with respect to the Class 2 VSC Holders regarding class level and amount. Attached and filed as a confidential exhibit is Exhibit D which lists the name of each VSC Holder claimant, their address, the amount they originally claimed and the amount recommended by the Liquidator. (Yuen Declaration, Par. 14.) The total amount of all Class 2 claims recommended by the Liquidator is \$5,904,683.11. (Yuen Declaration, Par. 6 and 14.)

D. Liquidator's Recommendation for All Other Claims

The Liquidator requests that the Court enter an Order approving the Liquidator's recommendation with respect to All Other Claimants – that their priority class be established below Class 2 and that determination of the amount of their claim be deferred unless and until there appear to be sufficient assets to make a distribution beyond Class 2. Attached and filed as

a confidential exhibit is Exhibit E which lists the name of each such claimant, their address, their recommended priority class and the amount they claimed. (Yuen Declaration, Par. 15.)

E. Liquidator's Recommendation for Late Filed Claims

The Liquidator requests that the Court enter an Order approving the Liquidator's recommendation with respect to Late Filed Claims. Attached and filed as a confidential exhibit is Exhibit F which sets forth the information for Class 7 late filed claims. In addition to the claims that were not timely filed, Exhibit F includes liabilities of the PrimeGuard Companies of which the Liquidator is aware but which were not timely filed as claims. The Liquidator has reported total liabilities of the PrimeGuard Companies of \$26,711,713.50. (Yuen Declaration, Par. 16.) The Liquidator recommends that all known claims against PrimeGuard/First Assured that were not the subject of timely filed proofs of claim be included in the Class 7 late filed claims in the net amount of \$16,976,092.23.

III. CONCLUSION

Based on the foregoing, the Liquidator respectfully requests that the Court enter an Order approving the Liquidator's recommendations, including:

- (i) That, the Court schedule a hearing in accordance with the Liquidation Act in order to consider all objections identified in Exhibits C-1 through C-5;
- (ii) That the claim amount and priority of all Class 2 claims (VSC claims) be established and confirmed as set forth in Exhibit D;
- (iii) That the priority but not amount of all Other Creditors (including Classes 3 through 9 except for Class 7) be established and confirmed as set forth in Exhibit E;
- (iv) That the priority (but not amount) of all Class 7 Late Filed Claims be established and confirmed as set forth in Exhibit F;

(v) That the amount of claims for all creditors beyond Class 2, including claimants in Classes 3 through 9, be determined only after such time as the Liquidator determines that sufficient assets will be available to distribute at the respective priority level; and

(vi) For such further relief as the Court deems necessary and appropriate under the circumstances.

DATED: Honolulu, Hawaii, March 16, 2010.

KOBAYASHI SUGITA & GODA



CLIFFORD K. HIGA

WENDELL H. FUJI

LANSON K. KUPAU

Attorneys for Plaintiff J.P. SCHMIDT, in his
capacity as Insurance Commissioner of the State of
Hawaii and Liquidator of PrimeGuard Insurance
Company, in Liquidation

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

J.P. SCHMIDT, in his capacity as Insurance) S.P. No. 05-1-0443 (RAN)
Commissioner of the State of Hawaii,) (Special Proceedings)
)
Petitioner,)
) DECLARATION OF PAUL S.K. YUEN
vs.)
)
PRIMEGUARD INSURANCE COMPANY,)
INC., A RISK RETENTION GROUP,)
)
Respondent.)
)
)
_____)

DECLARATION OF PAUL S.K. YUEN

PAUL S.K. YUEN declares as follows:

1. I am the duly appointed Special Deputy Liquidator of PRIMEGUARD INSURANCE COMPANY, INC., A RISK RETENTION GROUP ("PrimeGuard) in liquidation and hereby affirm that the statements contained in the present Petition are true and correct to the best of my knowledge and information. Declarant was appointed special deputy liquidator by Insurance Commissioner, J.P. Schmidt, on December 20, 2005.

2. In accordance with this Court's prior Orders, the Liquidator has previously sent a copy of the notice and claims bar deadline to all known creditors of PrimeGuard, First Assured Warranty Corporation and its affiliates ("First Assured") 1SourceAutoWarranty.com, Inc. and Warrantee Wise, Inc. (collectively the "PrimeGuard Companies").

3. To date, the Liquidator has received more than 7,200 claims, organized as follows:

Class 2 Claims filed by VSC Holders (See Exhibit D)

Number of Claims: 7,084

Amount of Claims Asserted by Claimants: \$12,311,842.27:

Classes 3 through 9 Claims – All Other claims (See Exhibit E)

Number of Claims: 127

Amount of Claims Asserted by Claimants: \$3,331,427.80

Class 7 Claims – Late Claims (See Exhibit F)

Amount of Claims: \$17,282,528.85

4. Subject to the Settlement Agreement, included in the claims being reported and recommended by the Liquidator are claims that had been filed First Assured in the bankruptcy proceeding.

5. The Liquidator has prepared and filed quarterly statements with the Court setting forth various financial information. Based on the reporting filed through 6/30/2009, the Liquidator has reported total liabilities of \$26,711,713.50, including among others Vehicle Service Contracts ("VSC"s) of \$20,544,288.44 and General Creditors of \$491,159.47.

6. As reported through 6/30/2009, the PrimeGuard Companies have total assets of \$5,743,800.64. Since the total amount of Class 2 Claims being recommended by the Liquidator is \$5,904,683.11, assuming that the recommendation being made by the Liquidator is approved, there will not be sufficient assets to make distributions beyond Class 2 Claims.

7. The Liquidator has sent a Notice of Determination in the form of Exhibit A and/or Exhibit B to each creditor that filed a proof of claim.

8. Exhibit A is a true and correct copy of the form of the Notice of Determination sent to each claimant asserting a claim under a VSC. The language in Exhibit A accurately sets forth the manner in which claims were calculated for benefits under each VSC claim.

9. Exhibit B is a true and correct copy of the form of the Notice of Determination sent to each claimant asserting any other claim. The notice identified the priority class of the claimant and explained that since no assets were available to make a distribution beyond Class 2, that the determination of the amount of the claim was being deferred.

10. For the Class 2 warranty claims, the Liquidator applied a methodology consistent with the warranty contract and with the company's prior practices to determine the recommended claim amount. The warranties were terminated consistent with this Court's order as of January 19, 2006. The duration of the contract was then converted to the number of days, identifying the number of days in-force along with the number of days remaining after termination. The premium was then pro-rated to arrive at a prorated refund amount. In those states where the law allows the amount of any claims to be subtracted from a prorated premium refund, the claims were accounted for. In the states where the law does not allow the claims to be subtracted, the amount of repairs was not applied to the pro rata refund amount.

11. One issue that became apparent in the claim process is the practice referred to as a dealer mark-up which occurred when the warranties were sold by car dealers and the dealers charged an amount in excess of the premium due to First Assured/PrimeGuard. The dealer kept any excess and only paid the premium to First Assured/PrimeGuard. The amount of refund calculated as part of the claims process is based on the amount of premium received by First Assured/PrimeGuard and not based on the amount paid to the dealer.

12. Exhibits C-1 through C-5, D, E and F contain confidential information including the names of claimants, their addresses and their contract information. Those Exhibits are being filed as confidential under seal with the Court.

13. Of the roughly 7,200 notices of determination sent, the Liquidator received a total of 60 objections. The Liquidator has categorized those 60 objections as follows:

- a. Exhibit C-1 sets forth those claims where the Liquidator made a revision to the claim amount after receipt of the objection. Having made that change, the Liquidator sent a revised Notice of Determination in the form of Exhibit A or Exhibit, as appropriate. None of the claimants identified in Exhibit C-1 filed an objection to the revised Notice of Determination.
- b. Exhibit C-2 sets forth the objections of claimants that were seeking benefits for repairs performed after the warranty was terminated.
- c. Exhibit C-3 sets forth the objections of claimants who objected to the methodology applied by the Receiver for calculating refunds.
- d. Exhibit C-4 sets forth objections that were denied because the claimants requested payment of a refund amount without reduction for prior repairs. As noted in Exhibit A and stated in the VSC form, all states except the following permit a refund to be reduced by the amount of authorized repairs: AL; AZ; CA; GA; IL; LA; NC; NV; OK; WA; and WI.
- e. Exhibit C-5 sets forth objections from claimants categorized as miscellaneous and including claims of VSC holders that did not fit in any of the other categories. For example, one claimant wanted to recover for personal anxiety, one challenged whether a claim was paid for, one claim misunderstood the difference between a claim for repairs and a claim for reimbursement and one claim asserts a claim seeking reimbursement for the cost of buying a replacement warranty.

f. As soon as possible after the Court schedules a hearing on the objections, the Liquidator is prepared to give notice of the hearing by first class mail to each claimant identified in Exhibits C-1 through C-5, to such claimant's attorney, if any was identified, not less than ten (10) nor more than thirty (30) days before the date of the hearing. In addition, the Liquidator is prepared to post on its web site notice of the hearing date and time.

14. Exhibit D sets forth the name of the claimants and the amount that the Liquidator is recommending be approved for all Class 2 VSC claimants.

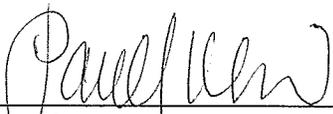
15. Exhibit E sets forth the name of the claimants and the amount asserted by such claimant for all claims in Classes 3 through 9 (excluding Class 7).

16. Exhibit F sets for the claim information for all claims of which the Liquidator is aware based on the books and records of PrimeGuard/First Assured but with respect to which a timely claim was not filed. Exhibit F contains the claims that the Liquidator is recommending be approved as Class 7 late-filed claims.

17. Based on the foregoing, I respectfully request that this court grant the present petition in its entirety.

I declare under penalty of law that the foregoing is true and correct.

DATED: Honolulu, Hawaii, March 9, 2010.



PAUL S.K. YUEN
Special Deputy Liquidator

EXHIBIT A

EXHIBIT A

FORM OF NOTICE SENT TO VSC HOLDER CLAIMANTS

<<INSERT DATE HERE>>

Via First Class U.S. Mail, Return Receipt Requested

<<Claimant Name>>
<< Address 1>>
<<Address 2>>
<<City, ST ZIP>>
<<COUNTRY if not US>>

Re: Notice of Determination of Claim filed with PrimeGuard Insurance Company, Inc., First Assured Warranty Corporation or ISourceAutoWarranty.com

Dear Claimant:

NOTICE IS HEREBY GIVEN, pursuant to § 431:15-329 of the Hawaii Revised Statutes, that J.P. SCHMIDT, Insurance Commissioner of the State of Hawaii, in his capacity as Liquidator ("Liquidator") of PrimeGuard Insurance Company, Inc. ("PrimeGuard"), has made a determination concerning your filed claim with the PrimeGuard estate as follows:

Priority Level: Class 2

Claim Amount:

Amount Requested by Claimant	Pro-Rated Refund Amount	Authorized Repairs (see Note 1)	Approved and Admitted Amount (see Note 2)	Notes
Data merge from file	Data merge from file	Data merge from file	Data merge from file	Data merge from file

An approved and admitted claim amount is subject to the available assets in the PrimeGuard estate, statutory classification requirements, and further court approval. The fact that the Liquidator approved or admitted a claim amount, does not, by itself, mean that you will receive the stated "Approved and Admitted Amount." The Liquidator cannot give any assurances respecting whether or when a distribution will be made, or what amounts will be distributed. Because the funds available to pay claims are limited, there is a possibility you may not recover any part of your claim. The purpose of this form is to confirm the claims and claim

amounts against 1SourceAutoWarranty.com, Inc., First Assured Warranty Corporation and PrimeGuard Insurance Company, Inc.

CALCULATION OF THE APPROVED AND ADMITTED AMOUNT, AS WELL AS THE PRO-RATED REFUND AMOUNT, AND AUTHORIZED REPAIRS AMOUNT, ARE AS SPECIFIED IN THE EXTENDED WARRANTY CONTRACT. However, even where allowable under the Extended Warranty Contract, the Liquidator chose not to deduct the \$75 service charge or any finance administrative fees from the Approved and Admitted Amount, thereby increasing the Approved and Admitted Amount.

PLEASE TAKE FURTHER NOTICE that if you disagree with the Liquidator's determination of your claim, you may submit a written objection, including all supporting documentation, to the Liquidator **within sixty (60) days** from the mailing date of this Notice at the following address:

PrimeGuard Insurance Company in Liquidation
c/o J.P. Schmidt, Liquidator of PrimeGuard Insurance Company
P.O. Box 3614
Honolulu, Hawaii 96811

If you do not file an objection with the Liquidator within sixty (60) days of the mailing date of this Notice, you may not further object to the Liquidator's determination. If you file a timely objection with the Liquidator and the Liquidator does not alter his determination as a result of the objection, the claim will be heard by the court or a court-appointed referee as soon as practicable. You, your attorney, and any other person directly affected, will be given notice of the hearing by first class mail not less than ten (10) nor more than thirty (30) days before the date of the hearing.

NOTE 1: AUTHORIZED REPAIRS. All contracts were cancelled by January 19, 2006. Therefore, repairs made after January 19, 2006 are not eligible for any reimbursement, and are not defined as "Authorized Repairs."

NOTE 2: Where permitted, the total amount of all Authorized Repairs were deducted from any Pro-Rated Refund Amount due to determine the "Approved and Admitted Amount." This method of calculation is permitted in all states except AL, AZ, CA, GA, IL, LA, NC, NV, OK, WA, and WI.

Example 1: If your pro-rated refund amount was \$500.00, and you were reimbursed \$300 for an authorized repair, and the applicable finance administration fees equaled \$50.00, then your "Approved and Admitted Amount" would be \$200.00 (because the Liquidator chose not to deduct any finance administration fees or the \$75 service charge).

Example 2: If your pro-rated refund was \$500.00, and you had \$500.00 or more in covered claims, then your "Approved and Admitted Amount" would be \$0.00.

EXHIBIT B

EXHIBIT B

FORM OF NOTICE SENT TO ALL OTHER CLAIMANTS
(NON-VSC HOLDER CLAIMANTS)

<<INSERT DATE HERE>>

Via First Class U.S. Mail, Return Receipt Requested

<<Claimant Name>>
<< Address 1>>
<<Address 2>>
<<City, ST ZIP>>
<<COUNTRY if not US>>

Re: **Notice of Determination of Claim filed with PrimeGuard Insurance Company, Inc., First Assured Warranty Corporation or ISourceAutoWarranty.com**

Dear Claimant:

NOTICE IS HEREBY GIVEN, pursuant to § 431:15-329 of the Hawaii Revised Statutes, that J.P. SCHMIDT, Insurance Commissioner of the State of Hawaii, in his capacity as Liquidator ("Liquidator") of PrimeGuard Insurance Company, Inc. ("PrimeGuard"), has made a determination concerning your filed claim with the PrimeGuard estate as follows:

Priority Level: Class <<Insert 3 – 9>>

Claim Amount:

Amount Claimed: <<Insert amount claimed>>

Amount Recommended: Deferred

Pursuant to § 431:15-329 of the Hawaii Revised Statutes, all assets must be distributed to creditors on a pro rata basis according to the priority level of the claimant. At this time, there does not appear to be assets sufficient to pay the Class 2, policyholder level claims in full. Accordingly, the Liquidator does not anticipate that there will be assets available to pay any claims in priority classes 3 through 9.

As a result, the Liquidator is deferring determination of your claim amount unless and until there appear to be sufficient assets to make a distribution to creditors at your priority level.

An approved and admitted claim amount is subject to the available assets in the PrimeGuard estate, statutory classification requirements, and further court approval. The fact that the Liquidator approved or admitted a claim amount, does not, by itself, mean that you will receive the stated "Approved and Admitted Amount." The Liquidator cannot give any assurances respecting whether or when a distribution will be made, or what amounts will be distributed. Because the funds available to pay claims are limited, there is a possibility you may not recover any part of your claim. The purpose of this form is to confirm the claims and claim amounts against 1SourceAutoWarranty.com, Inc., First Assured Warranty Corporation and PrimeGuard Insurance Company, Inc.

PLEASE TAKE FURTHER NOTICE that if you disagree with the Liquidator's determination of your claim, you may submit a **written objection**, including all supporting documentation, to the Liquidator **within sixty (60) days** from the mailing date of this Notice at the following address:

PrimeGuard Insurance Company in Liquidation
c/o J.P. Schmidt, Liquidator of PrimeGuard Insurance Company
P.O. Box 3614
Honolulu, Hawaii 96811

If you do not file an objection with the Liquidator within sixty (60) days of the mailing date of this Notice, you may not further object to the Liquidator's determination. If you file a timely objection with the Liquidator and the Liquidator does not alter his determination as a result of the objection, the claim will be heard by the court or a court-appointed referee as soon as practicable. You, your attorney, and any other person directly affected, will be given notice of the hearing by first class mail not less than ten (10) nor more than thirty (30) days before the date of the hearing.

EXHIBIT C-1 through C-5

(Filed Separately and Under Seal Pursuant to Order Granting Plaintiff's Ex Parte Motion to File Under Seal Exhibits To The Liquidator's Motion For Approval Of Recommendations Regarding Filed Claims filed on March 11, 2010)

EXHIBIT D

(Filed Separately and Under Seal Pursuant to Order Granting Plaintiff's Ex Parte Motion to File Under Seal Exhibits To The Liquidator's Motion For Approval Of Recommendations Regarding Filed Claims filed on March 11, 2010)

EXHIBIT E

(Filed Separately and Under Seal Pursuant to Order Granting Plaintiff's Ex Parte Motion to File Under Seal Exhibits To The Liquidator's Motion For Approval Of Recommendations Regarding Filed Claims filed on March 11, 2010)

EXHIBIT F

(Filed Separately and Under Seal Pursuant to Order Granting Plaintiff's Ex Parte Motion to File Under Seal Exhibits To The Liquidator's Motion For Approval Of Recommendations Regarding Filed Claims filed on March 11, 2010)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the date of filing, a copy of the above referenced document will be posted on the following website: www.primeguard.hawaii.gov.

DATED: Honolulu, Hawaii, March 14, 2010.



CLIFFORD K. HIGA

WENDELL H. FUJI

LANSON K. KUPAU

Attorneys for Plaintiff J.P. SCHMIDT, in his capacity as Insurance Commissioner of the State of Hawaii and Liquidator of PrimeGuard Insurance Company, in Liquidation