

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO**

In re:)
)
FIRST ASSURED WARRANTY CORPORATION,) Case No. 06-13669 MER
a Colorado corporation,)
) Chapter 11
EIN: 84-1366869)
)
)
Debtor.)
)

**MOTION FOR ORDER APPROVING: (I) COMPROMISE OF CONTROVERSY WITH
THE INSURANCE COMMISSIONER FOR THE STATE OF HAWAII; AND (II)
CONDITIONAL DISMISSAL OF THE BANKRUPTCY CASE**

First Assured Warranty Corporation (“Debtor”), by its counsel, Jessop & Company, P.C., pursuant to Rules 2002(a) and 9019 of the Federal Rules of Bankruptcy Procedure, and L. B. R. 202, hereby submit this Motion for Order Approving: (I) Compromise of Controversy with the Insurance Commissioner for the State of Hawaii; and (II) Conditional Dismissal of the Bankruptcy Case (this “Motion”), and in support thereof, Debtor advises the Court as follows:

I. INTRODUCTION

1. By this Motion, Debtor seeks the Court’s approval of a settlement which, if approved, will effectively resolve all matters in this bankruptcy case and all related litigation. The settlement provides for significant payments to vehicle service contract holders, trade creditors and administrative creditors and resolves the myriad disputes among the Hawaii Insurance Commissioner, Debtor and the Holden Family. In short, the settlement is the result of lengthy negotiations among the various parties in interest and the result is beneficial to all parties, including the estate and its creditors.

II. BACKGROUND OF DEBTOR

2. Debtor is a Colorado corporation with its principal place of business in Colorado. Debtor was in the business of selling extended automobile service contracts through automotive dealers and agents and, through its wholly owned subsidiary, 1SourceAutoWarranty.com, Inc. (“1Source”), to individual consumers via the internet. The contracts are known as vehicle service contracts, or “VSCs.”

3. Debtor’s business is subject to regulation in a number of states. Those states imposing regulations often require the vehicle service company to provide evidence of insurance to

support its obligations under the VSCs. To provide such insurance, Debtor sponsored and created an insurance company in 1998 known as PrimeGuard Insurance Company (“PrimeGuard”).

4. Initially, Debtor was the majority shareholder of PrimeGuard. On December 31, 2003, Debtor reorganized and spun-off PrimeGuard so that PrimeGuard ceased being a subsidiary of Debtor and instead became an affiliate owned by Warrantee Wise, Inc. (“Warrantee Wise”).

A. The Primeguard Liquidation and the Ancillary Proceeding

5. On November 10, 2005, J.P. Schmidt, Insurance Commissioner for the State of Hawaii (the “Commissioner”), filed an ex parte petition for seizure in the Circuit Court of the First Circuit for the State of Hawaii (“Hawaii Court”) and on November 14, 2005, the Hawaii Court entered a seizure order, which was amended on November 21, 2005 (the “Seizure Order”). Pursuant to the Seizure Order, the Commission seized control of PrimeGuard, a Hawaii domestic insurance company licensed as a risk retention group. The Seizure Order included “the premises occupied by [PrimeGuard] or its agents and affiliates for transaction of business, including but not limited to the premises occupied by First Assured Warranty Corporation, located in Colorado.” The Seizure Order also included any of PrimeGuard’s property held by Debtor or 1Source in various enumerated bank accounts owned by Debtor and 1Source.

6. After the seizure of PrimeGuard, on December 19, 2005, the Commissioner petitioned for and the Hawaii Court granted an Order of Liquidation (the “Liquidation Order”). In the Liquidation Order, the Hawaii Court declared PrimeGuard statutorily insolvent and ordered the Commissioner to take possession of PrimeGuard’s assets (the “PrimeGuard Liquidation”).

7. On May 3, 2006, the Commissioner filed a Motion for Leave to Add First Assured Warranty Corporation and 1SourceAutoWarranty.com, Inc. as Respondents (the “Consolidation Motion”) to the Hawaii proceeding. In anticipation of consolidation, the Commissioner sought approval of a claims process for PrimeGuard, First Assured and 1Source on May 4, 2006. On June 6, 2006, the Hawaii Court entered its order approving the PrimeGuard claims process and setting the claims bar date for November 30, 2006.

8. On or about November 15, 2005, the Commissioner of Insurance of the State of Colorado (the “Ancillary Receiver”) commenced an ancillary proceeding to the PrimeGuard Liquidation in the District Court, City and County of Denver, Colorado (the “Colorado Court”), captioned, initially, as *David F. Rivera v. PrimeGuard Insurance Company, Inc.*, Case No. 05-CV7376 (the “Ancillary Proceeding”).

III. PROCEDURAL HISTORY OF BANKRUPTCY CASE

9. On June 16, 2006 (the “Petition Date”), Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code in this Court (the “Bankruptcy Court”). Debtor continues to be technically “in possession of its properties” and in management of its business as Debtor in possession pursuant to §§ 1107 and 1108 of the Bankruptcy Code. No creditors’ or other committee has been appointed in this bankruptcy case.

10. Upon the Petition Date, the Consolidation Motion and other related proceedings in the PrimeGuard liquidation were effectively stayed. Similarly, on July 25, 2006, Debtor filed its Advice of Bankruptcy with the Colorado Court and thereby effectively stayed the Ancillary Proceeding.

11. On June 22, 2006, the Commissioner filed his Motion to Dismiss Chapter 11 Proceeding (the "Dismissal Motion") in the bankruptcy case. The Dismissal Motion sought dismissal of Debtor's bankruptcy case for cause pursuant to 11 U.S.C. § 1112.

12. On the same day, the Commissioner filed his Motion for Relief from Stay and on June 23, 2006, he filed his Amended Motion for Relief from Stay (the "Stay Motion"). The Stay Motion sought relief from the automatic stay in order to pursue a pending consolidation motion in a Hawaii state court. The Commissioner asserted that relief was proper for cause pursuant to 11 U.S.C. § 362(d) or, in the alternative, because the automatic stay does not apply to his exercise of Hawaii's police and regulatory power.

13. On June 29, 2006, the Commissioner filed his Motion to Excuse Turnover of Property by a Custodian (the "Custodian Motion"). The Custodian Motion sought to excuse the Commissioner from turning over property in which Debtor claimed an interest pursuant to 11 U.S.C. § 543(d).

14. Finally, on July 10, 2006, the Commissioner filed his Motion to Prohibit Use of Cash Collateral (the "Cash Collateral Motion"). The Cash Collateral Motion sought to prohibit Debtor from using the proceeds of certain checks payable to Debtor that the Commissioner delivered to Debtor during the course of this case and certain other funds pursuant to 11 U.S.C. § 363.

15. Debtor timely objected to all four motions. The Court conducted a four day trial on all four motions on August 17, 18, 29 and 30, 2006. The Court's rulings were entered in Orders dated March 6, 2007, and April 27, 2007. The Commissioner has appealed such rulings (the "Appeals") to the United States District Court for the District of Colorado (the "District Court"). The Appeals remain pending.

16. During the bankruptcy case, Debtor has filed certain adversary proceedings bearing the following adversary case numbers: 06-1735-MER, 06-1736-MER, 06-1737-MER and 07-1351-MER (collectively, the "Adversary Proceedings"). Three of the Adversary Proceedings relate to deposits made by Debtor in certain banks. The fourth adversary proceeding was filed against the Commissioner. The fourth adversary proceeding was filed on June 6, 2007, and Debtor is seeking a declaratory judgment and turnover of the contents of two bank accounts with balances of approximately \$3 million.

17. On or about July 3, 2007, Debtor, the Commissioner and members of the Holden family, including Ralph Holden, Nancy Perna, F. Mitchell Howell, Ronny Howell, Lisa Holden, Amy Sandifer and Joshua Howell (collectively, the "Holden Family"), sought and obtained abeyance of the bankruptcy case, the Appeals and Adversary Proceedings in order to permit the parties to pursue settlement negotiations. At the request of Debtor, the Commissioner and the parties to the

Adversary Proceedings, the Court has continued to hold the bankruptcy case and the Adversary Proceedings in abeyance until January 31, 2008.

IV. RELIEF REQUESTED

18. The parties have engaged in lengthy settlement negotiations, including an in-person meeting in Hawaii on July 26, 2007. The negotiations have culminated in a settlement agreement (the "Agreement"). A copy of the Agreement is attached hereto as **Exhibit A**.¹ Debtor requests that the Court approve the Agreement and authorize Debtor to undertake all actions contemplated by the Agreement. Debtor further requests that the Court issue an order dismissing the bankruptcy case conditioned upon receipt by the Bankruptcy Court of the Dismissal Notice (as defined below).

V. THE SETTLEMENT

19. Pursuant to the Agreement, Debtor shall cease prosecution of its Plan of Reorganization and Disclosure Statement dated October 16, 2006, and shall seek dismissal of the bankruptcy case. All properties of Debtor's estate (the "Bankruptcy Estate"), including any and all assets of any type in which Debtor has, asserts, or may assert an ownership interest (to the extent not released by the Agreement) shall be under the sole and exclusive jurisdiction of the Hawaii Court and the Hawaii Court shall have sole and exclusive jurisdiction over Debtor and the Bankruptcy Estate. The Bankruptcy Estate, along with 1Source and Warrantee Wise will then be administered and liquidated in the PrimeGuard Liquidation before the Hawaii Court under such terms and conditions as specified by the Hawaii Court.

20. The Agreement provides for specific conditions to occur in order for the Agreement to become effective. The Agreement specifically provides that the date that all of the conditions have been satisfied shall be the "Effective Date" of the Agreement. The conditions, without limitation, include: (i) payment of \$150,000 from the Holden Family to Debtor (the "Holden Payment") within thirty days of execution of the Agreement; (ii) approval by the Hawaii Court of a motion filed by the Commissioner disclosing the terms of the Agreement, seeking approval of the Agreement and seeking an order for the determination of good faith settlement in accordance with Haw. Rev. Stat. § 663-15.5; and (iii) approval of this Motion by this Bankruptcy Court.

21. Upon the Effective Date, Debtor shall file a notice of the Effective Date with this Bankruptcy Court. Such notice is defined in the Agreement as the "Dismissal Notice." The Dismissal Notice shall provide that all of the conditions required to reach the Effective Date have occurred and therefore Debtor is requesting dismissal of the bankruptcy case.

22. Claims against Debtor are addressed under the Agreement as follows:

a. First, upon the Effective Date, Debtor shall transfer the Holden Payment to the Ancillary Receiver pursuant to the terms of that certain Ancillary Deposit Agreement. The Ancillary Deposit Agreement is attached to the Agreement as Exhibit 3.5. The Ancillary Receiver shall

¹ On the date of this Motion, Debtor was awaiting signatures by certain parties to the Settlement Agreement. Debtor will supplement Exhibit A once the remaining signatures have been received.

distribute \$140,000 of the Holden Payment to “Allowed Unsecured Trade Creditors” claims on a pro-rata basis. “Allowed Unsecured Trade Creditors” is defined in the Agreement as those creditors who filed a proof of claim in the Debtor’s bankruptcy case asserting an unsecured claim and whose claim is not a VSC Claim (as defined in the Agreement and further discussed below) or a Tax Claim (as defined in the Agreement and further discussed below) and whose claim is listed on Exhibit 1 to the Ancillary Deposit Agreement. A corresponding copy of Exhibit 1 to the Ancillary Deposit Agreement is attached hereto as **Exhibit B**. The Allowed Unsecured Trade Creditors shall receive the pro-rata amount listed in the column labeled “Pro-rata Distribution” on Exhibit A hereto.

b. Second, each creditor that has filed a proof of claim in Debtor’s bankruptcy case that is properly classified as a secured claim (each, a “Secured Claim”) shall be addressed and treated in the liquidation of Debtor in the Hawaii Court. Debtor is aware of only one Secured Claim creditor, the State of Wisconsin, Department of Justice (“Wisconsin”). In its proof of claim filed in Debtors’ bankruptcy case, Wisconsin asserts that it holds a “cash equivalent deposit” in the amount of approximately \$128,000 “to secure Debtor’s obligations under warranty policies sold to Wisconsin residents.” Pursuant to the Agreement, Debtor and the Commissioner shall jointly cooperate to resolve the Wisconsin claim prior to the Dismissal Date. If Debtor and the Commission are unable to resolve the Wisconsin claim, such claim shall be addressed and treated in the PrimeGuard Liquidation proceedings. Any and all other Secured Claims, if any, will be addressed in the same manner.

c. Next, the Agreement provides that Debtor shall pay administrative expense claims (the “Administrative Claims”) and the allowed claims, if any, asserted by the IRS and other taxing authorities (the “Tax Claims”) from the cash in Debtor’s possession, which as of July 31, 2007, totaled \$394,120.87 (the “Cash Collateral”). Attached hereto as **Exhibit C** is a list of Tax Claims. The Administrative Claims include: (i) Debtor’s attorneys fees and costs which have accrued as of November 30, 2007, in the approximate amount of \$280,000; (ii) Debtor’s notice agent fees and costs and U.S. Trustee fees and costs, currently estimated in the combined amount of \$85,000; and (iii) Debtor’s officers and agents salaries which have accrued as of November 30, 2007, in the amount of \$130,000.

d. Finally, all creditors with claims arising under VSCs and who have filed a proof of claim in Debtors’ bankruptcy case (each, a “VSC Claim”), regardless of whether such claims have been filed in the PrimeGuard Liquidation, shall be treated as if such claims were timely filed on an appropriate proof of claim form; and the Commissioner shall treat all such VSC Claims the same as similarly situated claims timely filed with the Commissioner on proper forms. All creditors that have filed a proof of claim in Debtor’s bankruptcy case and who are not listed on Exhibits A, or B hereto are being treated by Debtor as a holder of a VSC Claim; however the Liquidator reserves all rights regarding the VSC Claims, including without limitation, the right to object to any VSC claim pursuant to the Hawaii Insurers Supervision Rehabilitation and Liquidation Act, 431:15-301 *et seq.* (“Liquidation Act”).

23. The Agreement further provides for a number of releases that will effectively resolve all of the litigation between the parties. The releases include: (i) the Commissioner’s release of the Holden Family; (ii) the Holden Family’s release of the Commissioner and the Ancillary Receiver;

(iii) Debtor's, 1Source's and Warrantee Wise's release of the Holden Family and officer, directors and Professionals (as defined in the Agreement); (iv) the Holden Family's release of Debtor, 1Source and Warranty Wise; (v) the Commissioner's and Ancillary Receiver's release of Debtor, 1Source and Warranty Wise for actions related to the bankruptcy case; and (vi) Debtor's, 1Source's and Warranty Wise's release of the Commissioner and the Ancillary Receiver related to the seizure and the liquidation.

VI. FACTS AND LAW SUPPORTING SETTLEMENT

24. The law favors compromise and settlement of disputes among parties. *See Lindquist v. First Northtown Nat'l Bank (In Re Lakeland Dev. Corp.)*, 48 B.R. 85, 90 (Bankr. D. Minn. 1985). The Court's authority to approve settlements is derived from Fed. R. Bankr. P. 9019(a). Specifically, "[o]n motion by the trustee and after notice and hearing, the court may approve a compromise or settlement." Fed. R. Bankr. P. 9019(a). Approval of a settlement may be disturbed only when it achieves an unjust result amounting to clear abuse of discretion. *Reiss v. Hagmann*, 881 F.2d 890, 891-92 (10th Cir. 1989).

25. The Supreme Court has held that in exercising its discretion, a court must apprise itself of all facts necessary to assist it in determining the probabilities of ultimate success should the claim be litigated including forming an educated estimate of the complexity, expense, likely duration of litigation, and the possible difficulties of collecting on any judgment which might be obtained. *See Protective Comm. For Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968). The court, however, does not have to conduct a mini-trial to determine the probable outcome of any claims waived in the settlement but need only apprise itself of the relevant facts and law so that it can make an informed and intelligent decision. *In re Bugaighis*, 2004 Bankr. LEXIS 2243, *14-15 (Bankr. D. Colo. 2004).

26. In evaluating a settlement, the Court must determine whether the settlement is fair and equitable and in the best interests of the estate. *Kaiser Steel Corp v. Frates (In re Kaiser Steel Corp.)*, 105 B.R. 971, 976 (D. Colo. 1989) (citations omitted). In making this determination, the Court should consider (1) the probable success of the litigation on the merits; (2) any potential difficulty in collection of a judgment; (3) the complexity and expense of the litigation; and (4) the interests of creditors in deference to their reasonable views. *Id.*; *see also Official Comm. of Unsecured Creditors of Western Pac. Airlines v. Western Pac. Airlines (In re Western Pac. Airlines)*, 219 B.R. 575, 579 (D. Colo. 1998); *In re Kopexa Realty Venture Co.*, 213 B.R. 1020, 122 (B.A.P. 10th Cir. 1997). As one Court explained, "the court need not resolve all of these issues, but must only identify them so that the reasonableness of the settlement may be evaluated." *Western Pac. Airlines*, 219 B.R. at 580 (citation omitted). The overall purpose is to carefully weigh the value of the settled claim against the value to the estate by the settlement. *Id.*

27. Debtor submits that the settlement here satisfies each of the factors because the settlement: (i) resolves what is already protracted litigation and which, if such litigation continues and even if Debtor prevails, would likely consume significant amounts of the estate's resources and result in a worse outcome for creditors, (ii) addresses and resolves the complex issues regarding state

law and the numerous proceedings that are pending in several courts; and (iii) preserves the potential for the highest possible distribution to creditors. Each of these factors is further discussed below

A. Probable Success of Litigation

28. The settlement is beneficial to the estate first because it will conclude the expensive and time consuming litigation between Debtor and the Commissioner. The Agreement will remove the uncertainty of continuing such litigation and the possibility that creditors will end up in a worse position even if Debtor ultimately prevails.

29. In order to analyze the “probable success” factor, the Court must first define success. Pursuant to Debtor’s Plan, Debtor proposes to liquidate its assets and the assets of its wholly-owned subsidiary ISource. Debtor does not propose to reorganize and continue its business. Thus, on one level, success could be defined in regard to the litigation between Debtor and the Commissioner as any outcome that will allow Debtor to liquidate its assets and provide distributions to creditors in an amount and in a time period approximated under the Plan. The Agreement accomplishes the goal of providing a distribution to creditors in an amount and time frame that is comparable to, or better than, the Plan.

30. Debtor’s ultimate goal in this case was to recapture the \$3 million seized by the Commissioner in connection with the liquidation of PrimeGuard. The four initial motions did not reach this issue but instead contested the right of Debtor to be and remain a debtor in a federal bankruptcy case. While the Bankruptcy Court ultimately determined that the filing of the bankruptcy case was proper, the Court left for another day the rights of Debtor against the Commissioner. The Court also did not rule on Debtor’s right to use the Cash Collateral which has left the estate with no current funds to go forward. The Court also did not rule on the property rights of Debtor in the deposits held by the Commissioner. In short, after sixteen months in bankruptcy, Debtor has only earned the right to be in bankruptcy and has no operating cash and no assets.

31. In the four motions filed by the Commissioner in the bankruptcy case, as well as in the PrimeGuard Liquidation proceedings, the Commissioner has, in essence, asserted that Debtor’s assets should be included in the liquidation of PrimeGuard. Although the Bankruptcy Court has ruled in Debtor’s favor, the Commissioner has appealed such rulings to the District Court.

32. In his Appeals, the Commissioner has argued that the Bankruptcy Court erred in denying the Dismissal Motion and the Stay Motion because, among other things, Debtor is an insurance company and therefore ineligible for bankruptcy protection under 11 U.S.C. § 109(b). Debtor vigorously disputes this characterization. The Commissioner further asserts that the Bankruptcy Court erred in its application of the McCarren-Furgeson Act (the “MFA”). The MFA is a federal law that, in certain circumstances, reverse-preempts other federal laws to the extent those laws are determined to invalidate, impair, or supersede state laws regulating the business of insurance. *See* 15 U.S.C. § 1101(b). Debtor disputes this contention as well.

33. The probable success factor must consider the potential costs of recovery and the overall amount at issue. In this case, if Debtor prevailed on all claims against the Commissioner

Debtors assets would total approximately \$3.5 million. After reduction for the expected costs to obtain Debtor's assets, the amount available for distribution to creditors would possibly be approximately \$2 million to \$2.5 million. The sum of the proofs of claims filed by creditors to date is approximately \$2.6 million. This amount does not, however, include any claim filed by the Commissioner.

34. If Debtor prevailed in the Appeals and the bankruptcy case continued, it is likely that the Commissioner would assert a claim in the bankruptcy case. Debtor anticipates that the Commissioner's claim would be in the approximate amount of \$10 million to \$12 million. Although Debtor would dispute the amount of the Commissioner's claim, it is not improbable that the ultimate allowed claim would likely be in an amount sufficient to substantially dilute the claims of the other creditors. Indeed, Debtor anticipates that even if it succeeded in going forward with the Plan, most creditors would recover pennies on the dollar or less.

35. Time delay is a further factor to consider. If Debtor prevails in the Appeals, there is a possibility that the Commissioner would appeal to the Tenth Circuit and perhaps ultimately to the United States Supreme Court. Debtor anticipates that the present pending Appeals will not conclude for at least another year. In the event of further appeals, the time delay would obviously increase.

36. In sum, Debtor asserts that there is a substantial litigation risk if it were to proceed with the bankruptcy proceedings and the Appeals. Further, the probability of success to liquidate its assets and provide a distribution to creditors is low. The settlement removes the litigation risks and provides for a significant distribution to creditors in a timely manner. Thus, the probable success of litigation factor weighs in favor of approval of the Agreement.

B. Complexity and Expense

37. Debtor is a Colorado corporation that has filed for protection under federal bankruptcy law. The bankruptcy case has approximately 64,000 creditors. Debtor is in a dispute with an administrative agency of a foreign state government. The Commissioner has initiated a liquidation proceeding under Hawaii law and asserted that all of Debtor's assets belong in such liquidation. The Ancillary Receiver has initiated similar proceedings in Colorado. Based on the above, it is evident that everything about this bankruptcy case and the underlying dispute between Debtor and the Commissioner is complex and expensive.

38. The complexity is evident from the variety of legal issues in play, including issues arising under Hawaii state law, Colorado state law, and federal bankruptcy law and the length of the legal briefs filed to date. The Bankruptcy Court has waded through briefs from both sides that have consumed a forest of trees to produce. The Bankruptcy Court's ruling issued on March 6, 2007, was itself a forty-two page decision.

39. Similarly, the bankruptcy and each of the pending related pieces of litigation, i.e., the Appeals, the Ancillary Proceeding and the Adversary Proceedings, have resulted in significant expense to Debtor. Debtor has incurred attorney's fees to its approved professionals as of November 30, 2007, in the amount of approximately \$280,000.

40. If the Agreement is not approved, the complexity and expense will only increase. In the Appeals, for example, the Commissioner has raised issues of statutory interpretation and the inter-play between federal and state law. Only one of the two pending Appeals has been briefed. If the Appeals continue, Debtor will face the cost of briefing the appeal relating to the Bankruptcy Court's Order dated April 27, 2007, and the cost of oral argument. Debtor anticipates even further costs if it prevails since the Commissioner is likely to continue an appeal to the Tenth Circuit.

41. Even in the bankruptcy case itself the complexity and expense will increase without approval of the Agreement. Absent settlement, Debtor will need to obtain approval of its Disclosure Statement and proceed toward confirmation of its Plan. Such tasks will be all the more difficult if the Commissioner objects at every step. Absent settlement, Debtor will also need to continue prosecuting the Adversary Proceedings and Debtor will bear the costs associated therewith.

42. In sum, the Agreement was executed after significant litigation between Debtor and the Commissioner, including production of volumes of documents, numerous depositions and a four-day trial. The Agreement represents a comprehensive and fair settlement. If approved, the Agreement will negate the costs associated with the Appeals, the pending Adversary Proceedings, the Ancillary Proceeding and the bankruptcy case. Based on the above, Debtor asserts that the complexity and expense factor weighs in favor of approving the settlement.

C. Interest of Creditors

43. The settlement is in the best interest of creditors because it accomplishes a number of goals, including mitigating further litigation costs and providing a distribution to creditors. Indeed, Debtor's settlement with the Commissioner represents the best likely outcome for Debtor's creditors.

44. If the bankruptcy case were to continue, it is likely that the Commissioner would possibly assert claims for indemnification in an amount of approximately \$10 million to \$12 million. Assuming such claims were allowed, the Commissioner would receive the substantial portion of any distribution to creditors.

45. In contrast, the settlement provides a return to trade creditors within the range of any possible distribution if one assumed Debtor was successful on all accounts. If approved, the settlement will allow certainty for Allowed Unsecured Trade Creditors. Absent the settlement, any distribution to trade creditors will depend upon the actual success of the litigation and the attendant costs incurred by Debtor. If such costs are high or Debtor is not successful, Debtors' anticipate that trade creditors will receive no distribution.

46. Likewise, VSC claim holders will be treated in the Hawaii liquidation proceedings and will participate in a much larger pool of assets. Debtor anticipates, therefore, a larger recovery for VSC claimants. If approved, the Agreement will remove the duplication of claims. Many or most of the VSC claimants that have filed a proof of claim in the bankruptcy cases have also filed a claim in the PrimeGuard Liquidation proceedings. These duplicate claims will be addressed and

disallowed under the terms of the Hawaiian liquidation proceedings which will presumably increase the distribution to allowed claims.

47. Finally, the settlement provides for the payment of Tax Claims and Administrative Claims. Debtor currently has no ability to pay these claims. Indeed, if the settlement is not approved, Debtor anticipates a protracted legal battle with the Commissioner simply to establish Debtor's right to use the Cash Collateral.

48. Based on the above, Debtor asserts that the interest of creditor factor weighs in favor of approving the settlement.

VII. NOTICE

49. Simultaneously herewith, Debtor is filing its Notice Pursuant To Local Bankruptcy Rule 202 of Motion for Order Approving: (I) Compromise of Controversy with the Insurance Commissioner for the State of Hawaii; and (II) Conditional Dismissal of the Bankruptcy Case (the "202 Notice"). Debtor, through its approved claims and notice agent, CPT Group, Inc. ("CPT") is serving the 202 Notice by U.S. mail on all creditors and parties in interest. Debtor will file a supplemental certificate of service once service of the 202 Notice has been accomplished.

50. Given that creditor list includes approximately 65,000 creditors and parties in interest and in order to avoid unnecessary expense, Debtor will post the Motion and the Settlement Agreement on the case information website hosted by CPT at <http://www.cptgroup.com>. Creditors will be required to follow the appropriate links. Debtor submits that providing notice as set forth in this Motion is proper and sufficient under the existing circumstances and in the best interests of the estate

VIII. CONCLUSION

51. In conclusion, the Agreement represents a reasoned decision that takes into account the probability of success, the costs of continuing litigation, the uncertainty of the outcome and the interests of creditors. Accordingly, Debtors requests that the Court approve the Agreement.

WHEREFORE, Debtor respectfully requests that the Court enter an Order: (i) authorizing Debtor to enter into the Agreement; (ii) authorizing Debtor to undertake all actions contemplated by the Agreement; (iii) approving dismissing the bankruptcy case upon receipt by the Court of the Dismissal Notice; and (iv) granting such other relief as the Court deems appropriate under the circumstances.

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[Signature page follows]

DATED this 11th day of January, 2008.

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CERTIFICATE OF SERVICE

The undersigned certifies that true and correct copies of the within **Motion for Order Approving: (I) Compromise of Controversy with the Insurance Commissioner for the State of Hawaii; and (II) Conditional Dismissal of the Bankruptcy Case** have been mailed, by placing the same in a U. S. Mail Depository, postage prepaid, this 11th day of January, 2008, addressed to the parties on the attached list:

/s/ Kathleen M. Gerwin

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