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1ST CIRCUIT COURT
STATE OF HAWAII
FILED

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E. ALAGAO
CLERK

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 VSM
(Special Proceedings)

LIQUIDATOR'S PETITION FOR FINAL ORDER AND JUDGMENT APPROVING LIQUIDATOR'S SETTLEMENT WITH SHAREHOLDERS' FAMILY AND AFFILIATES AND PETITION FOR GOOD FAITH DETERMINATION OF SETTLEMENT; MEMORANDUM IN SUPPORT OF PETITION; DECLARATION OF SPECIAL DEPUTY LIQUIDATOR PAUL S.K. YUEN; EXHIBIT "A"; NOTICE OF HEARING AND CERTIFICATE OF SERVICE; PROPOSED ORDER

HEARING
Date: MAR 5 2008
Time: 8:30 AM
Judge: Hon. Victoria S. Marks

NO TRIAL DATE SET

LIQUIDATOR'S PETITION FOR FINAL ORDER AND JUDGMENT APPROVING LIQUIDATOR'S SETTLEMENT WITH SHAREHOLDERS' FAMILY AND AFFILIATES AND PETITION FOR GOOD FAITH DETERMINATION OF SETTLEMENT

Petitioner J.P. SCHMIDT, in his capacity as Hawaii Insurance Commissioner and as Liquidator of PrimeGuard Insurance Company (collectively, the "Liquidator"), by and through his attorneys, Kobayashi, Sugita & Goda, hereby petitions this court for findings and orders:

(1) Entering an Order and Final Judgment approving the Settlement Agreement and Mutual Releases ("Agreement") dated December 19, 2007 by and among the following parties: J.P. Schmidt, in his capacities as Hawaii Insurance Commissioner and as Liquidator of PrimeGuard Insurance Company (collectively, the "Liquidator"); Marcy Morrison, Commissioner of Insurance of the State of Colorado, in her capacity as Ancillary Receiver of PrimeGuard Insurance Company ("Ancillary Receiver"); Warrantee Wise, Inc. ("Warrantee Wise"); First Assured Warranty Corporation ("First Assured"); 1SourceAutoWarranty.com, Inc. ("1Source"); and Ralph Holden, Nancy Perna, F. Mitchell Howell, Ronny Howell, Lisa Holden, Amy Sandifer and Joshua Howell (collectively, the "Holden Family") (collectively, the "Parties") and authorizing the Liquidator to undertake all actions contemplated by the Agreement; and

(2) Determining that the settlement entered into between the Parties under the Agreement was entered into in good faith in accordance with Haw. Rev. Stat., § 663-15.5.

This Petition is made pursuant to Rules 7, 8 and 54(b) of the Hawaii Rules of Civil Procedure, Rules 7 and 7.1 of the Rules of the Circuit Court of the State of Hawaii, and Haw. Rev. Stat. § 663-15.5 and 431:15-310, and is supported by the attached Memorandum, declarations, exhibits, and the records and files herein.

DATED: Honolulu, Hawaii, January 11, 2008.

KOBAYASHI SUGITA & GODA

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

Attorneys for Petitioner

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 VSM (Special Proceedings) MEMORANDUM IN SUPPORT OF PETITION

MEMORANDUM IN SUPPORT OF PETITION

I. INTRODUCTION

The above-entitled action arises from the financial collapse of the PRIMEGUARD INSURANCE COMPANY, INC., a Hawaii domestic insurance company licensed as a risk retention group ("PrimeGuard"). Simultaneous herewith, J.P. SCHMIDT, in his capacity as Hawaii Insurance Commissioner and as Liquidator of PrimeGuard (collectively, the "Liquidator") has caused this Petition for Final Order and Judgment Approving Liquidator's Settlement with Shareholders' Family and Affiliates and Petition for Good Faith Determination of Settlement (the "Petition").

Pursuant to the Petition, the Liquidator requests entry of an Order and Final Judgment (i) approving the Settlement Agreement and Mutual Releases, dated December 19, 2007 (the "Agreement") by and among the following parties: the Liquidator; Marcy Morrison, Commissioner of Insurance of the State of Colorado, in her capacity as Ancillary Receiver of PrimeGuard (the "Ancillary Receiver"); Warrantee Wise, Inc. ("Warrantee Wise"): First Assured Warranty Corporation ("First Assured"); 1SourceAutoWarranty.com, Inc. ("1Source"); and

Ralph Holden, Nancy Perna, F. Mitchell Howell, Ronny Howell, Lisa Holden, Amy Sandifer and Joshua Howell (collectively, the "Holden Family") (collectively, the "Parties"); and (ii) determining that the settlement entered into between the Parties under the Agreement was entered into in good faith in accordance with Haw. Rev. Stat. § 663-15.5.[1]

In summary, the settlement will conserve the Court's and Liquidator's resources. The settlement achieves the following results for the benefit of the PrimeGuard estate:

(1) The Agreement terminates the bankruptcy of First Assured Warranty Corporation ("First Assured") and permits First Assured, Warrantee Wise, Inc. ("Warrantee Wise") and 1SourceAutoWarranty.com ("1Source") to be liquidated in the PrimeGuard Liquidation in the Circuit Court of the First Circuit for the State of Hawaii (the "Liquidation Court").

(2) The Agreement resolves the dispute over possession and ownership of approximately $3.5 million that was seized by the Hawaii Insurance Commissioner, with respect to which First Assured asserts an interest, and which was the subject of a pending adversary proceeding in First Assured's bankruptcy while also ensuring that the Liquidator will take sole possession and ownership of such funds and administer them under the general supervision, and sole and exclusive jurisdiction, of the Liquidation Court;

(3) The Agreement requires the Holden Family to pay $150,000 to be used for the benefit of First Assured's creditors.

(4) The Agreement benefits the creditors in that it ensures that claims at the policyholder level will be resolved in the PrimeGuard Liquidation, whether such claims were properly filed with the Liquidator or in the First Assured bankruptcy.

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[1] The Settlement Agreement attached as Exhibit A contains all signatures except the following Warrantee Wise, 1Source and F. Mitchell Howell.. Counsel has represented that those signatures will be delivered shortly and upon receipt the Exhibit A will be supplemented.

(5) The Agreement permits unsecured creditors to realize a share of $140,000 by means of an ancillary deposit distributed in accordance with the Colorado ancillary proceeding.

(6) The Agreement provides for mutual releases between and among the Parties, resolving pending litigation and potential litigation and resulting in substantial savings in the avoidance of future fees, costs and expenses and the accompanying delays associated with such potential litigation.

As a result, the settlement was entered into in good faith in accordance with Haw. Rev. Stat., § 663-15.5 and is in the best interest of the estate of PrimeGuard and its creditors, members, insureds, and policyholders.

II. BACKGROUND

1. PrimeGuard is a Risk Retention Group that was domiciled in Hawaii. First Assured, Warrantee Wise, and 1Source (collectively "First Assured") were affiliates of PrimeGuard that sold Vehicle Service Contracts ("VSC's") in various states around the country and those VSC's were insured by PrimeGuard.

2. Various members of the Holden Family have been involved as shareholders, officers, directors, lenders, consultants and in the financing, control and/or operation of First Assured and PrimeGuard.

3. On November 10, 2005, the Hawaii Insurance Commissioner filed an ex parte petition for seizure order in this Court and on November 14, 2005, this Court entered the seizure order, which was amended on November 21, 2005 (the "Seizure").

4. As part of the Seizure, the Hawaii Insurance Commissioner seized assets held in accounts under First Assured's name on the claim that such assets belonged to PrimeGuard and were held in trust, or should have been held in trust, by First Assured for PrimeGuard. Cash seized by the Commissioner is currently held in a bank account in Hawaii and totals approximately $3.5 million (the "Seized Funds").

5. On December 19, 2005, this Court placed PrimeGuard under an Order of Liquidation in response to the Hawaii Insurance Commissioner's Motion for Liquidation Order and in light of PrimeGuard's statement that it did not contest the Liquidation Order.

6. On June 16, 2006, First Assured filed a voluntary petition under Chapter 11 of the Bankruptcy Code ("First Assured Bankruptcy") in the United States Bankruptcy Court for the

District of Colorado, Case No. 06-13669-MER ("Bankruptcy Court"). First Assured is the debtor-in-possession in the First Assured Bankruptcy.

7. On or about June 22, 2006, the Liquidator filed its Motion for Relief from Stay and Amended Motion to Dismiss, and subsequently filed its Motion to Excuse Turnover of Property by a Custodian and Motion to Prohibit Use of Cash Collateral, which motions were ruled on in Orders from the Bankruptcy Court dated March 6, 2007 and April 27, 2007, which Orders are the subject of appeals pending in the United States District Court for the District of Colorado (the "Appeals").

8. In the First Assured Bankruptcy, First Assured is in possession of certain cash that totaled $394,120.87 as of July 31, 2007 ("Cash Collateral"), in which the Liquidator has asserted an interest.

9. The Liquidator is currently in the possession of the Seized Funds, in which First Assured has asserted an interest and which are the subject of an adversary proceeding before the Bankruptcy Court.

10. On or about July 3, 2007, the Parties sought and obtained stays of the First Assured Bankruptcy, the Appeals and Adversary Proceedings in order to permit the Parties to pursue settlement negotiations.

11. As a result of those negotiations, the Parties entered into the Agreement, a copy of which is attached as Exhibit A hereto.

12. On December 18, 2007, the Liquidator filed a Complaint in the Circuit Court of the First Circuit for the State of Hawaii, Civil No. 07-1-2386-12, wherein the Liquidator alleges claims against BDO Seidman, LLP, Anton Collins Mitchell, AON Insurance Managers (USA), John Does 1-50, Jane Does 1-50, Doe Corporations 1-50, Doe Partnerships 1-50, and Doe Entities 1-50. As of the date of this Petition, that Complaint has not yet been served on the defendants, however the Liquidator is in the process of serving such Complaint in accordance with Hawaii law.

13. Subject to the mutual releases set forth in the Agreement, the Liquidator reserves all rights and remedies related to pursuing other claims, and/or causes of action, whether of PrimeGuard or First Assured.[2] The Liquidator has entered into a tolling agreement with PrimeGuard's prior president and counsel to permit further negotiation. In addition, the Liquidator anticipates pursuing rights to recover assets of PrimeGuard and/or First Assured, including, for example, deposits maintained in various states.

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[2] The Agreement provides for a number of releases, including: the Liquidator's release of the Holden Family; the Holden Family's release of the Liquidator and the Ancillary Receiver; First Assured's, 1Source's and Warrantee Wise's release of the Holden Family and officers, directors and Professionals (as defined in the Agreement); (iv) the Holden Family's release of First Assured, 1Source and Warranty Wise; the Liquidator's and Ancillary Receiver's release of First Assured, 1Source and Warranty Wise for actions related to the bankruptcy case; and First Assured's, 1Source's and Warranty Wise's release of the Liquidator and the Ancillary Receiver related to the seizure and the liquidation.

14. The Liquidator is seeking a good faith determination of settlement as set forth herein as a condition of the Agreement (§ 2) in these proceedings to apply to all persons interested in the PrimeGuard Liquidation, including but not limited to persons who have been sued by the Liquidator and potential claims or actions that may be brought on behalf of PrimeGuard.

15. The Liquidator is providing notice to all persons known to be interested in the PrimeGuard Liquidation by sending the attached Notice in a joint mailing made with First Assured to all persons known to be interested in the First Assured Bankruptcy. In addition, this Petition and the Agreement will be posted on the following web site: http://www.hawaii.gov/dcca/areas/ins/ins_div_actions/primeguard/

16. The Liquidator's decision to enter into the Agreement was made after careful consideration of First Assured's and the Holden Family's assets, the costs and fees of continuing litigation in the Bankruptcy Court, Appeals and adversary proceedings regarding assets that were subject to claims from both PrimeGuard and First Assured and also the costs and fees of pursuing any action against the Holden Family and securing a judgment against them and the likelihood of collecting such judgment. *See* Declaration of Special Deputy Liquidator Paul S.K. Yuen. As noted in Section 1.11 of the Agreement, First Assured made demand against certain members of the Holden Family and the Holden Family vigorously disputed such claims and asserted numerous defenses thereto.

17. The settlement will conserve the Court's and Liquidator's resources by eliminating the need to proceed with a jury trial to determine the liability of First Assured and the Holden and also ensure that the funds seized are subject to the PrimeGuard Liquidation.

18. As such, the settlement was entered into in good faith in accordance with Haw. Rev. Stat., § 663-15.5 and is in the best interest of the estate of PrimeGuard and its creditors, members, insureds, and policyholders.

III. DISCUSSION

A. Standard of Care Re: A Good Faith Determination

Hawaii's 'Good Faith Settlement Act' is codified in Haw. Rev. Stat., § 663-15.5 and states in pertinent part as follows:

> (a) A release, dismissal with or without prejudice, or a covenant not to sue or not to enforce a judgment that is given in good faith under subsection (b) to one or more joint tortfeasors, or to one or more co-obligors who are mutually subject to contribution rights, shall:
>
> (1) Not discharge any other joint tortfeasor or co-obligor not released from liability unless its terms so provide;

(2) Reduce the claims against the other joint tortfeasor or co-obligor not released in the amount stipulated by the release, dismissal, or covenant, or in the amount of the consideration paid for it, whichever is greater; and

(3) Discharge the party to whom it is given from all liability for any contribution to any other joint tortfeasor or co-obligor.

See generally, Haw. Rev. Stat., § 663-15.5.

In *Troyer v. Adams*, 102 Haw. 399, 77 P.3d 83 (2003), the Hawaii Supreme Court established the standard upon which Hawaii courts should decide a petition for a good faith determination of a proposed settlement involving joint tortfeasors. The Court held that the question of whether a settlement is "given in good faith" is a matter left to the discretion of the trial court in light of all of the relevant circumstances at the time of the settlement and, absent an abuse of discretion, the trial court's determination should not be disturbed. *Id.* at 427, 77 P.2d at 111.

In determining what constitutes a good faith settlement under Haw. Rev. Stat., § 663-15.5, the Court adopted the "totality of the circumstances" test and emphasized that the primary purpose of a court's analysis is to prevent collusive settlements aimed at injuring non-settling defendants. *See id.* at 426, 77 P.2d at 110. Although not exclusive, the Court identified a number of factors that may be utilized by the trial court in determining whether a settlement was made in good faith:

> (1) the type of case and difficulty of proof at trial, e.g., rear-end motor vehicle collision, medical malpractice, product liability, etc.; (2) the realistic approximation of total damages that the plaintiff seeks; (3) the strength of the plaintiff's claim and the realistic likelihood of his or her success at trial; (4) the predicted expense of litigation; (5) the relative degree of fault of the settling tortfeasors; (6) the amount of consideration paid to settle the claims; (7) the insurance policy limits and solvency of the joint tortfeasors; (8) the relationship among the parties and whether it is conducive to collusion or wrongful conduct; and (9) any other evidence that the settlement is aimed at injuring the interests of a non-settling tortfeasor or motivated by other wrongful purpose.

Id. 102 Haw. at 427, 77 P.2d at 111. More interested in encouraging settlement than ensuring the equitable apportionment of liability, Hawaii courts have focused on the complexity and anticipated expense of litigation as well as the settling plaintiff's likely difficulty in collecting on a judgment. *See id.* at 426; *see also Whirlpool Corp. v. CIT Group/Business Credit, Inc.*, 293 F.Supp.2d 1144, 1155 (D.Haw.2003).

B. The Settlement Referenced Herein Was Entered in Good Faith and Was Not the Result of Collusion

The settlement referenced herein was entered in good faith and not the result of collusion. The Liquidator evaluated and considered the following factors prior to entering into the settlement:

(1) The financial condition of First Assured, the Holden Family and PrimeGuard;

(2) The damages sought on behalf of PrimeGuard;

(3) The costs to prosecute the Liquidator's claims against First Assured and the Holden Family in a jury trial, including appeals and potential re-trial, in addition to continuing to pursue claims in the Bankruptcy Proceeding, the Appeals and the pending adversary proceedings;

(4) The lack of availability of insurance coverage;

(5) The probability of success on such claims;

(6) The likelihood of collecting any such judgment that may be rendered;

(7) The Liquidator's incurred legal expenses to date.

In addition to the above, the settlement referenced herein was negotiated at arms length over a significant period of time with all parties having been represented by experienced counsel.

As this Court is aware, Hawaii law favors the resolution of controversies through compromise or settlement rather than by litigation. Such alternatives to court litigation not only bring finality to the uncertainties of the parties but are consistent with the court's policy to foster

amicable, efficient and inexpensive resolution of disputes. *See Sylvester v. Animal Emergency Clinic of Oahu*, 72 Haw. 560, 566, 825 P.2d 1053, 1056-57 (1992); *see also Gossinger v. AOAO Regency of Ala Wai*, 73 Haw. 412, 424, 835 P.2d 627, 633 (1992) (public policy favors the finality of negotiated settlements that avoid the costs and uncertainties of protracted litigation); *Dowsett v. Cashman*, 2 Haw. App. 77, 82-83, 625 P.2d 1064, 1068 (1981) (the law favors settlements and consequently it must favor their finality).

C. Any Opposing Party Bears the Burden of Proof to Establish that the Settlement was Not Entered in Good Faith

Pursuant to Haw. Rev. Stat., § 663-15.5(b), "a nonsettling alleged joint tortfeasor or co-obligor asserting a lack of good faith shall have the burden of proof on that issue." Solidifying this point, the federal court in *Whirlpool* made the following remarks:

> *Additionally, Haw. Rev. Stat., § 663-15.5 does not require that the settling parties present a record to the court explaining the basis for a settlement. In fact, the statute places the burden on the party challenging the good faith determination.*

See Whirlpool, 293 F.Supp.2d at 1154.

D. Assuming That This Court Finds That The Settlement Was Made in Good Faith, Haw. Rev. Stat., § 663-15.5 Mandates That First Assured and the Holden Family Be Discharged From All Liability for Contribution to Any Other Co-Obligors and/or Joint Tortfeasors Interested in the PrimeGuard Estate

Assuming that this Court finds that the settlement referenced herein was entered in good faith, Haw. Rev. Stat., § 663-15.5 mandates that all claims against First Assured and the Holden Family as co-obligors related to the PrimeGuard Liquidation be forever barred and no claims may be asserted against them by any other joint tortfeasor or co-obligor related to the PrimeGuard Liquidation. This bar applies to, but is not limited to, defendants named by the Liquidator in the Complaint filed on December 18, 2007 and referenced in paragraph 12 above.

§ 663-15.5. Release; joint tortfeasors; co-obligors; good faith settlement.

(a) A release, dismissal with or without prejudice, or a covenant not to sue or not to enforce a judgment that is given in good faith under subsection (b) to one or more joint tortfeasors, or to one or more co-obligors who are mutually subject to contribution rights, shall: ...

(3) Discharge the party to whom it is given from all liability for any contribution to any other joint tortfeasor or co-obligor. ...

(d) A determination by the court that a settlement was made in good faith shall:

(1) Bar any other joint tortfeasor or co-obligor from any further claims against the settling tortfeasor or co-obligor, except those based on a written indemnity agreement; and

(2) Result in a dismissal of all cross-claims filed against the settling joint tortfeasor or co-obligor, except those based on a written indemnity agreement.

In the present situation, the Liquidator submits that the referenced settlement was entered in good faith based on the reasons described herein and was not the result of collusion designed to harm any non-settling defendants. The Liquidator further submits that the settlement is in the best interests of the estate of PrimeGuard and its creditors, members, insureds, and policyholders.

IV. CONCLUSION

Based on the foregoing, Petitioner J.P. SCHMIDT, in his capacity as Hawaii Insurance Commissioner and as Liquidator of PrimeGuard Insurance Company, respectfully requests that this Court finds that the settlement referenced herein and attached hereto as Exhibit "A" was entered in good faith and grants his Motion in its entirety.

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DATED: Honolulu, Hawaii, January 11, 2008.

KOBAYASHI SUGITA & GODA

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

Attorneys for Petitioner

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 VSM (Special Proceedings) DECLARATION OF SPECIAL DEPUTY LIQUIDATOR PAUL S.K. YUEN

DECLARATION OF SPECIAL DEPUTY LIQUIDATOR 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. On December 19, 2005, PrimeGuard was placed into liquidation pursuant to Haw. Rev. Stat., Chapter 431, Article 15, in the Circuit Court of the First Circuit, State of Hawaii entitled *J.P. Schmidt, in his capacity as Insurance Commissioner of the State of Hawaii vs. PrimeGuard Insurance Company, A Risk Retention Group*, S.P. No. 05-1-0443 VSM ("Liquidation Court")

3. Pursuant to the powers granted to him in Haw. Rev. Stat., Chapter 431, Article 15, the Liquidator is authorized to enter into the settlements on behalf of all creditors and policyholders

of PrimeGuard such as the settlement referenced in the attached Petition and attached thereto as Exhibit A between and among J.P. Schmidt, in his capacities as Hawaii Insurance Commissioner and as Liquidator of PrimeGuard; Marcy Morrison, Commissioner of Insurance of the State of Colorado, in her capacity as Ancillary Receiver of PrimeGuard Insurance Company ("Ancillary Receiver"); Warrantee Wise, Inc. ("Warrantee Wise"); First Assured Warranty Corporation ("First Assured"); 1SourceAutoWarranty.com, Inc. ("1Source"); and Ralph Holden, Nancy Perna, F. Mitchell Howell, Ronny Howell, Lisa Holden, Amy Sandifer and Joshua Howell (collectively the "Holden Family").

4. Based on the following information, Declarant determined that the settlement referenced herein was in the best interests of the policy holders and creditors of the PrimeGuard estate:

(1) The financial condition of First Assured, Warrantee Wise, 1Source, the Holden Family and PrimeGuard;

(2) The damages sought on behalf of the Estate;

(3) The costs to prosecute the Liquidator's claims against First Assured and the Holden Family in a jury trial, including appeals and potential re-trial, in addition to continuing to pursue claims in the Bankruptcy Proceeding, the Appeals and the pending Adversary Proceedings;

(4) The lack of availability of insurance coverage;

(5) The probability of success on such claims;

(6) The likelihood of collecting any such judgment that may be rendered;

(7) The Liquidator's incurred legal expenses to date.

5. The settlement was negotiated at arms-length with all parties represented by experienced counsel and was not the result of collusion or intended to harm the non-settling

defendants. Further, Declarant submits that the settlement is in the best interests of the estate of PrimeGuard and its creditors, members, insureds, and policyholders.

6. Moreover, the settlement is also conditioned upon the approval of the court in *J.P. Schmidt, in his capacity as Insurance Commissioner of the State of Hawaii vs. PrimeGuard Insurance Company, A Risk Retention Group*, S.P. No. 05-1-0443 VSM, Circuit Court of the First Circuit, State of Hawaii.

7. Attached hereto as Exhibit "A" is a true and correct copy of the Settlement Agreement and Mutual Releases.

8. 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, January 11, 2008.

PAUL S.K. YUEN
Special Deputy Liquidator

EXHIBIT A

SETTLEMENT AGREEMENT AND MUTUAL RELEASES

This Settlement Agreement and Mutual Releases ("Agreement") is dated December 19, 2007, by and among the following parties (collectively, the "Parties"): J.P. Schmidt, in his capacities as Hawaii Insurance Commissioner and as Liquidator of PrimeGuard Insurance Company (collectively, the "Liquidator"); Marcy Morrison, Commissioner of Insurance of the State of Colorado, in her capacity as Ancillary Receiver of PrimeGuard Insurance Company ("Ancillary Receiver"); Warrantee Wise, Inc. ("Warrantee Wise"); First Assured Warranty Corporation ("First Assured"), 1SourceAutoWarranty.com, Inc. ("1Source"); and Ralph Holden, Nancy Perna, F. Mitchell Howell, Ronny Howell, Lisa Holden, Amy Sandifer and Joshua Howell (collectively, the "Holden Family").

1. Recitals and Definitions.

1.1 PrimeGuard Insurance Company ("PrimeGuard") is a Hawaii domestic insurance company licensed as a risk retention group.

1.2 Warrantee Wise is a Colorado corporation and is a 99% owner of PrimeGuard. Warrantee Wise was engaged in the business of selling vehicle service contracts ("VSCs") that were insured by PrimeGuard.

1.3 First Assured is a Colorado corporation with its principal place of business in Colorado and is an affiliate of PrimeGuard. First Assured was engaged in the business of selling VSCs that were insured by PrimeGuard.

1.4 1Source is a Colorado corporation with its principal place of business in Colorado and is a wholly-owned subsidiary of First Assured. 1Source was engaged in the business of selling VSC's that were insured by PrimeGuard.

1.5 Various members of the Holden Family have been involved as shareholders, officers, directors, lenders, consultants and in the financing, control and/or operation of First Assured, PrimeGuard, Warrantee Wise and/or 1Source.

1.6 On November 10, 2005, the Hawaii Insurance Commissioner filed an ex parte petition for seizure order in the Circuit Court of the First Circuit for the State of Hawaii ("Liquidation Court") and on November 14, 2005, the Liquidation Court entered a seizure order, which was amended on November 21, 2005 (the "Seizure").

1.7 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, captioned *Marcy Morrison v. PrimeGuard Insurance Company, Inc.*, Case No. 05-CV9376 (the "Ancillary Proceeding").

1.8 On December 19, 2005, the Liquidation Court placed PrimeGuard under an Order of Liquidation ("PrimeGuard Liquidation").

EXHIBIT A

1.9 On June 16, 2006, First Assured filed a voluntary petition under Chapter 11 of the Bankruptcy Code ("First Assured Bankruptcy") in the United States Bankruptcy Court for the District of Colorado, Case No. 06-13669-MER ("Bankruptcy Court"). First Assured is a debtor-in-possession in the First Assured Bankruptcy.

1.10 In the First Assured Bankruptcy, First Assured has filed certain adversary proceedings (collectively, the "Adversary Proceedings"), bearing the following adversary case numbers: 06-1735-MER, 06-1736-MER, 06-1737-MER and 07-1351-MER. The defined phrase "First Assured Bankruptcy" includes the "Adversary Proceedings."

1.11 In the First Assured Bankruptcy, First Assured made demand against Nancy Perna and Ralph Holden for the return of transfers totaling approximately $850,000 which First Assured alleged were avoidable as possible preferential, fraudulent or improper distributions. Nancy Perna and Ralph Holden both vigorously dispute such claims and have asserted numerous defenses to such claims, including subsequent new value and solvency.

1.12 The Liquidator's proceedings against First Assured are the subject of the automatic stay pursuant to 11 U.S.C. § 362(a).

1.13 On or about June 22, 2006, the Liquidator filed its Motion for Relief from Stay and Amended Motion to Dismiss, and subsequently filed its Motion to Excuse Turnover of Property by a Custodian and Motion to Prohibit Use of Cash Collateral, which motions were ruled on in Orders from the Bankruptcy Court dated March 6, 2007 and April 27, 2007, which Orders are the subject of appeals pending in the United States District Court for the District of Colorado ("Appeals").

1.14 In the First Assured Bankruptcy, First Assured is in possession of certain cash totaling $394,120.87 as of July 31, 2007 ("Cash Collateral"), in which the Liquidator claims an interest.

1.15 The Liquidator is currently in possession of approximately $3.5 million, in which First Assured claims an interest.

1.16 On or about July 3, 2007, the Parties sought and obtained stays of the First Assured Bankruptcy, the Appeals and Adversary Proceedings in order to permit the Parties to pursue settlement negotiations. On July 25, 2007, the Parties agreed that the negotiations were being held in Hawaii at the request of PrimeGuard and as an accommodation by First Assured and the Holden Family, and that the attendance (in person or by telephonic conference call) at such negotiations or the mere presence of persons attending such negotiations in the State of Hawaii shall in no event have any legal consequences including, without limitation, a deemed waiver of or consent to jurisdiction, a contact sufficient to establish jurisdiction, an admission of liability, or an admission of any fact, whether express or implied, by any party attending the negotiations, either in person or through a representative. In addition, the Liquidator and his

agents and representatives, agreed not to serve, attempt to serve or cause to be served any process for any claim or action on the following individuals and entities while in Hawaii for attendance at the settlement negotiations: (i) First Assured and its officers and director (ii) 1SourceAutoWarranty.com, (ii) Douglas Jessop, as counsel for First Assured, (iii) Josh Howell, personally or as shareholder of First Assured (iv) Josh Howell, as representative or agent of the shareholders of First Assured and (iv) Josh Howell as a representative or agent of Ralph Holden. The Parties have since engaged in settlement negotiations, including an in-person meeting in Hawaii on July 26, 2007, which negotiations have culminated in this Agreement.

1.17 In order to minimize the cost, expense and difficulty of proceeding with litigation regarding the PrimeGuard Liquidation, the Seizure, the First Assured Bankruptcy, the Adversary Proceedings and the Appeals, the Parties are willing to settle all issues on the terms and conditions set forth below.

1.18 It is understood that the Parties' agreement to the terms hereof shall in no manner be deemed to be a fact or an admission, express or implied, of liability or the merits of a position by any Party to any other person or entity, by any party hereto with respect to any matter, nor shall the Parties' agreement to the terms hereof be deemed to constitute consent to jurisdiction in the State of Hawaii, State of Colorado, or any other forum or state.

Agreements

NOW THEREFORE, for and in consideration of the mutual agreements, promises, covenants, and releases herein set forth, and for other good and valuable consideration, the sufficiency of which is hereby conclusively acknowledged, it is hereby agreed by and among the Parties as follows:

2. **The Effective Date.** The "Effective Date" shall be defined as the first business day upon which all of the following conditions have been satisfied:

(a) all Parties have signed this Agreement;

(b) the Holden Payment shall have been made;

(c) the Liquidation Court has entered its order(s)

(i) approving this Agreement and granting the petition for determination of Good Faith Settlement as described in Section 3.4 of this Agreement (the "Hawaii Approval Order(s)");

(ii) Thirty days (as computed in accordance with Hawaii Rules of Civil Procedure) have passed from entry of the Hawaii Approval Order(s); and

(iii) The Hawaii Approval Order(s) shall not have been reversed or modified on appeal and, if any such appeal is pending, the Hawaii Approval Order(s) shall not have been stayed.

(d) the Bankruptcy Court has entered its order:

(i) approving this Agreement and authorizing the dismissal of the First Assured Bankruptcy after the Court receives notice of the Effective Date (the " Bankruptcy Approval Order");

(ii) Ten days (as computed in accordance with Fed. R. Bankr. P. 9006) shall have passed from the entry of the Bankruptcy Approval Order; and

(iii) The Bankruptcy Approval Order shall not have been reversed or modified on appeal and, if any such appeal is pending, the Bankruptcy Approval Order shall not have been stayed.

3. **Actions Before the Effective Date.**

3.1 On or before the date that is the 30th day from the date that is the last date of execution of this Agreement, the Holden Family will cause $150,000 (the "Holden Payment"), as referenced in § 2(b) of this Agreement, to be deposited into First Assured's counsel's COLTAF account (non-interest bearing).

3.2 Upon execution of this Agreement, First Assured shall immediately cease prosecution of its Plan of Reorganization and Disclosure Statement dated October 16, 2006 ("Plan").

3.3 Upon execution of this Agreement and if possible by December 28, 2007 and no later than January 11, 2008, First Assured shall file and prosecute in good faith a motion (the "Bankruptcy Motion") in the Bankruptcy Court disclosing the terms of this Agreement, and seeking authorization to dismiss the First Assured Bankruptcy conditioned upon the Bankruptcy Court's receipt of notice of the Effective Date (the "Dismissal Notice"). Pending the Bankruptcy Court's ruling on the Bankruptcy Motion, First Assured shall take no action inconsistent with the terms or purposes of this Agreement. First Assured and the Liquidator shall cooperate with the preparation and distribution of the notice of the Bankruptcy Motion, including the shared mailing of such notice along with notice of the Hawaii Motion(s) (as defined below).

3.4 Upon execution of this Agreement and if possible by December 28, 2007 and no later than January 11, 2008, the Liquidator shall file and prosecute in good faith a motion(s) in the Liquidation Court (the Hawaii Motion(s)) disclosing the terms of this Agreement, seeking the Liquidation Court's approval of the Agreement and seeking an order for the determination of

Good Faith Settlement, which shall include PrimeGuards' release and dismissal of the Holden Family, First Assured, 1Source and Warrantee Wise, as set forth herein, as co-obligors in accordance with Haw. Rev. Stat. § 663-15.5. Pending the Liquidation Court's ruling on the Hawaii Motion(s), the Liquidator shall take no action inconsistent with the terms or purposes of this Agreement. The Parties agree to cooperate in good faith in the preparation and filing of the Hawaii Motion(s) and securing of such order(s), including the shared mailing of notices by First Assured and the Liquidator.

3.5 Contemporaneously with execution of this Agreement, First Assured, with the Liquidator's input and approval, shall enter into an agreement with the Ancillary Receiver (the "Ancillary Deposit Agreement"). A copy of the Ancillary Deposit Agreement is attached hereto as **Exhibit 3.5.** Pursuant to the terms of the Ancillary Deposit Agreement, First Assured and the Ancillary Receiver, with the Liquidator's input and approval, will create an "Ancillary Deposit" which shall be funded by the Holden Payment. The Ancillary Deposit will total One Hundred Fifty Thousand dollars ($150,000). Of that amount, One Hundred Forty Thousand dollars ($140,000) shall be used to pay "Allowed Unsecured Trade Creditors" (as defined below) claims on a pro rata basis as further specified in Section 6 below. The remaining Ten Thousand Dollars ($10,000) shall be used to pay any expenses associated with the Ancillary Deposit Agreement or the Ancillary Proceedings. Any remaining amounts of the Ancillary Deposit after paying expenses associated with the Ancillary Deposit Agreement or the Ancillary Proceedings shall be transferred by the Ancillary Receiver to the Liquidator. If the amount of surplus is not sufficient to pay the costs incurred by the Ancillary Receiver associated with establishing, maintaining and closing the Deposit Account, the Liquidator agrees to reimburse the Ancillary Receiver for such costs actually incurred, subject to approval by the Liquidation Court. The Ancillary Deposit will be maintained by the Ancillary Receiver subject to the jurisdiction of the court with jurisdiction over the Ancillary Proceedings and will be administered and liquidated in that proceeding in accordance with this Agreement and the Ancillary Deposit Agreement.

4. **Deliverables on the Effective Date.** On the Effective Date, or on the date indicated below, and in connection with effecting and consummating the Effective Date, the following events shall occur:

4.1 First Assured's counsel shall transfer the Holden Payment to the Ancillary Receiver. Upon the Dismissal Date (as defined below in Section 5.1), the Holden Payment will be the sole and exclusive property of the Ancillary Receiver maintained under the jurisdiction of the Ancillary Proceeding in accordance with Colo. Rev. Stat. § 10-3-552 and the Colorado Insurers' Rehabilitation and Liquidation Act, Colo. Rev. Stat § 10-3-501 *et seq.* and such funds will be distributed by the Ancillary Receiver under the terms of the Ancillary Deposit Agreement.

4.2 Subject to Section 7 below, and on the date indicated, First Assured shall issue payments from the Cash Collateral for the limited purpose of paying the following bankruptcy

administrative expenses, which are hereby deemed reasonable and appropriate, and the allowed claims asserted by the IRS and other taxing authorities (the "Tax Claims"):

(i) On the Effective Date, Attorneys fees and costs which have accrued as of November 30, 2007, in the approximate amount of $280,000;

(ii) On or after the date of execution of this Agreement, Notice agent and U.S. Trustee fees and costs, currently estimated in the amount of $85,000;

(iii) On the Effective Date, First Assured salaries which have accrued as of November 30, 2007, in the amount of $130,000; and

(iv) On or after the date of execution of this Agreement, Tax Claims currently estimated in the amount of $10,000.

4.3 Attorneys for the Parties shall execute and file the Dismissal Notice with the Bankruptcy Court which shall provide that all of the conditions and events set forth in Section 2 of this Agreement have occurred.

5. Bankruptcy Court and Liquidation Court Proceedings.

5.1 Upon receipt of the Dismissal Notice, the Bankruptcy Court shall issue an order dismissing the First Assured Bankruptcy (the "Dismissal Date"). As part of the dismissal of the First Assured Bankruptcy, the Appeals and Adversary Proceedings will also be dismissed.

5.2 Except as provided herein, upon the Dismissal Date all properties of the estate in the First Assured Bankruptcy (the "First Assured Estate"), including any and all assets of any type in which First Assured has, asserts, or may assert an ownership interest (to the extent not released herein), including but not limited to all assets identified in any and all schedules filed by First Assured as the Debtor in the First Assured Bankruptcy, shall be transferred to the Liquidator at which time the Liquidator shall take sole possession and ownership of the assets of First Assured and administer them under the general supervision, and sole and exclusive jurisdiction, of the Liquidation Court. The Liquidator will be vested with the title to all of the property, contracts, and rights of action and all of the books and records of First Assured, wherever located, as of the Dismissal Date, in accordance with Haw. Rev. Stat. § 431:15-307 and the Hawaii Insurers Supervision Rehabilitation and Liquidation Act, 431:15-301 *et seq.* ("Liquidation Act"). Consistent with this provision, the Parties agree that (i) the Bankruptcy Court will have continuing jurisdiction over this Agreement and the First Assured Estate until the Dismissal Date; and (ii) there will be no interruption or gap in ownership and/or jurisdiction and that, immediately upon the Dismissal Date, the Liquidation Court shall have sole and exclusive jurisdiction over First Assured and the First Assured Estate which shall be liquidated by the

Liquidator under the Liquidation Act under such terms and conditions as specified by the Liquidation Court.

5.3 Subject to the Liquidation Court's approval of this Agreement: (i) all First Assured creditors with claims arising under vehicle service contracts and who have filed a proof of claim in the First Assured Bankruptcy ("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 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.

5.4 Subject to Section 9.6 of this Agreement, First Assured and the Holden Family will cooperate in good faith with the Liquidator in seeking such rulings as are consistent with this Agreement and the administration and liquidation of First Assured in the Liquidation Court.

5.5 1Source and Warrantee Wise will be liquidated in the Liquidation Court along with First Assured. Upon the Dismissal Date any and all assets of any type in which 1Source and Warrantee Wise have, assert, or may assert an ownership interest (to the extent not released herein) shall be transferred to the Liquidator at which time the Liquidator shall take sole possession and ownership of the assets of 1Source and Warrantee Wise and administer them under the general supervision, and sole and exclusive jurisdiction, of the Liquidation Court. The Liquidator will be vested with the title to all of the property, contracts, and rights of action and all of the books and records of 1Source and Warrantee Wise, wherever located, as of the Dismissal Date, in accordance with Haw. Rev. Stat. § 431:15-307 and the Liquidation Act. Consistent with this provision, the Parties agree that there will be no interruption or gap in ownership and/or jurisdiction and that, immediately upon the Dismissal Date, the Liquidation Court shall have sole and exclusive jurisdiction over 1Source and Warrantee Wise, which shall be liquidated by the Liquidator under the Liquidation Act under such terms and conditions as specified by the Liquidation Court.

5.6 Subject to Section 9.6 of this Agreement, First Assured, 1Source and Warrantee Wise and the Holden Family will cooperate in good faith with the Liquidator in effecting the transfer of any and all right, title and interest to properties of 1Source, Warrantee Wise and/or the First Assured Estate, except as to those properties addressed herein, including assets of any type or nature, including but not limited to causes of action, in which 1Source, Warrantee Wise and/or First Assured asserts a claim of ownership, including but not limited to all assets identified by First Assured in any and all property schedules filed with the Bankruptcy Court and the proceeds thereof.

5.7 Subject to Section 9.6 of this Agreement, First Assured, 1Source, Warrantee Wise and the Holden Family agree to cooperate in good faith regarding the liquidation of 1Source and Warrantee Wise in the Liquidation Court. First Assured, 1Source, Warrantee Wise and the

Holden Family agree not to commence bankruptcy proceedings regarding 1Source and/or Warrantee Wise.

5.8 Subject to Section 9.6 of this Agreement, the Liquidator will cooperate in good faith with First Assured in seeking such rulings as are consistent with this Agreement and effecting the payment of the bankruptcy administrative expenses listed in Section 4.2 and Section 7.

6. Ancillary Proceedings and Trade Creditor Claims

6.1 Pursuant to the Ancillary Deposit Agreement, the Ancillary Receiver shall distribute One Hundred and Forty Thousand Dollars ($140,000) of the Ancillary Deposit on a pro-rata basis to the Allowed Unsecured Trade Creditors (as defined below) no later than 360 days after the Effective Date.

6.2 "Allowed Unsecured Trade Creditors" shall be defined to mean those creditors who filed a proof of claim in the First Assured Bankruptcy Case asserting an unsecured claim and whose claim is not a VSC Claim or a Tax Claim and whose claim is listed on Exhibit 1 to the Ancillary Deposit Agreement. The Allowed Unsecured Trade Creditors shall receive the pro-rata amount listed in the column labeled "Pro-rata Distribution" on Exhibit 1 to the Ancillary Deposit Agreement.

6.3 Certain creditors have filed a proof of claim in the First Assured Bankruptcy that is properly classified as a VSC Claim. Such claims shall be addressed pursuant to Section 5.3 above and shall not receive any distribution from the Ancillary Deposit. Similarly, certain trade creditors have filed a proof of claim in the First Assured Bankruptcy that is properly classified as a secured claim (each, a "Secured Claim"). All Secured Claims shall be addressed in the liquidation of First Assured in the Liquidation Court as specified in Section 5 hereof.

7. Cash Collateral and Administrative Expenses.

7.1 Because the Cash Collateral is insufficient to pay all of the reasonable and appropriate administrative expenses listed in Section 4.2, the existing Cash Collateral shall be allocated by First Assured to pay such claims as follows:

(a) first to pay the Tax Claims;

(b) second to pay the notice agent and U.S. Trustee fees and costs;

(c) third to pay fees and salaries of Patrick Giefer; and

(d) fourth to pay, on a pro rata basis, attorneys fees and costs of Jessop & Co, P.C. and fees and salaries of Robert Dungan.

7.2 To the extent that any of the claim amounts set forth in Section 4.2 are reduced or otherwise satisfied, First Assured shall have the discretion to distribute the remainder from the Cash Collateral to the other administrative expense claims identified herein. To the extent First Assured has a surplus after the administrative expense claims identified in § 4.2 are paid, such surplus shall be paid to the Liquidator on the Dismissal Date.

7.3 If the Cash Collateral has been exhausted by payment of the administrative expense claims identified in § 4.2, the shortfall (i.e. the remaining unpaid reasonable and appropriate administrative expense claims identified herein), including, but not limited to, First Assured's attorney's fees and costs and salaries and costs accrued after November 30, 2007, if any, shall be paid up to a maximum amount of $100,000, from the following two sources: first, until six months after the Effective Date, the Liquidator will attempt to liquidate assets currently in the possession of the First Assured Estate and use the proceeds from such liquidation efforts to pay any shortfall; second, in the event those proceeds are insufficient to pay such shortfall, the Liquidator shall pay such remaining balance within thirty (30) days of the one-year anniversary of the Effective Date.

8. Mutual Releases.

8.1 Liquidator and Ancillary Receiver Release of Holden Family.

Effective upon the Effective Date, the Liquidator and Ancillary Receiver, for themselves and their respective successors and assigns, each individually hereby releases, acquits, and forever discharges the Holden Family, individually and collectively, their personal representatives, heirs, assigns, and attorneys (solely in their capacity as attorneys for the Holden Family and except as set forth below) of and from any and all injuries, actions, assessments, claims, controversies, counterclaims, cross-claims, third-party claims, fourth-party claims, (or any other claims under Rule 14 of the Hawaii Rules of Civil Procedure, Colorado Rules of Civil Procedure, or the Federal Rules of Civil Procedure, or rule similar thereto of any other jurisdiction, and including without limitation claims for indemnity, contribution, subrogation, and/or reimbursement), causes of action, suits, liabilities, demands, damages, losses, decrees, awards, liens, disputes, costs, lost profits, loss of services, expenses, fees (including attorneys' and other professionals' fees), judgments and compensation whatsoever, in law or in equity, known or unknown, suspected or unsuspected, asserted or unasserted, patent or latent, which have been or could have been brought, arising out of, incidental to, or in any way connected with PrimeGuard, First Assured, Warrantee Wise, 1Source, or the commencement and/or administration of the PrimeGuard Liquidation, the Ancillary Proceeding, the First Assured Bankruptcy, and the Seizure.

The release contemplated in this Section 8.1 does not apply to Robert Dungan; however, the releases set forth in Sections 8.3, 8.4 and 8.5 apply to Robert Dungan.

8.2 Holden Family Release of Liquidator and Ancillary Receiver.

Effective upon the Effective Date, the Holden Family, individually and collectively, their personal representatives, heirs and assigns, hereby release, acquit, and forever discharge the Liquidator, Ancillary Receiver, their respective successors, assigns, and attorneys (solely in their capacity as attorneys for the Liquidator or Ancillary Receiver) of and from any and all injuries, actions, assessments, claims, controversies, counterclaims, cross-claims, third-party claims, fourth-party claims, (or any other claims under Rule 14 of the Hawaii Rules of Civil Procedure, Colorado Rules of Civil Procedure, or the Federal Rules of Civil Procedure, or rule similar thereto of any other jurisdiction, and including without limitation claims for indemnity, contribution, subrogation, and/or reimbursement), causes of action, suits, liabilities, demands, damages, losses, decrees, awards, liens, disputes, costs, lost profits, loss of services, expenses, fees (including attorneys' and other professionals' fees), judgments and compensation whatsoever, in law or in equity, known or unknown, suspected or unsuspected, asserted or unasserted, patent or latent, which have been or could have been brought, arising out of, incidental to, or in any way connected with PrimeGuard, First Assured, Warrantee Wise, 1Source, or the commencement and/or administration of the PrimeGuard Liquidation, the Ancillary Proceeding, the First Assured Bankruptcy, and the Seizure.

8.3 First Assured, 1Source and Warrantee Wise Release of Holden Family and Officers, Directors, and Professionals.

Effective upon the Effective Date, First Assured, 1Source and Warrantee Wise, collectively and individually, for itself, its officers, directors, partners, agents, affiliates, employees, successors and assigns, each hereby releases, acquits, and forever discharges the Holden Family, and also the officers, directors and accountants, auditors and attorneys (collectively, the "Professionals") of First Assured, 1Source and Warrantee Wise, respectively, individually and collectively, their successors, personal representatives, heirs, assigns, and attorneys of and from any and all injuries, actions, assessments, claims, controversies, counterclaims, cross-claims, third-party claims, fourth-party claims, (or any other claims under Rule 14 of the Hawaii Rules of Civil Procedure, Colorado Rules of Civil Procedure, or the Federal Rules of Civil Procedure, or rule similar thereto of any other jurisdiction, and including without limitation claims for indemnity, contribution, subrogation, and/or reimbursement), causes of action, suits, liabilities, demands, damages, losses, decrees, awards, liens, disputes, costs, lost profits, loss of services, expenses, fees (including attorneys' and other professionals' fees), judgments and compensation whatsoever, in law or in equity, known or unknown, suspected or unsuspected, asserted or unasserted, patent or latent, which have been or could have been brought, arising out of, incidental to, or in any way connected with PrimeGuard, First Assured, Warrantee Wise, 1Source, or the commencement and/or administration of the PrimeGuard Liquidation, the Ancillary Proceeding, the First Assured Bankruptcy, and the Seizure.

First Assured, 1Source and Warrantee Wise each represents and warrants that it has considered potential claims and causes of action against its own officers, directors and Professionals and concluded that this settlement will minimize the cost, expense and difficulty of proceeding with litigation against those individuals and or entities.

First Assured represents and warrants that no material transactions that are not of record occurred during the First Assured Bankruptcy. A material breach of this representation and warranty invalidates the release set forth in this Section 8.3 with respect to the officers, directors and Professionals of First Assured for any conduct, actions or inactions related to the First Assured Bankruptcy and occurring after May 15, 2006.

8.4 Holden Family Release of First Assured, 1Source and Warrantee Wise.

Effective upon the Effective Date, the Holden Family, individually and collectively, their personal representatives, heirs and assigns, hereby release, acquit, and forever discharge First Assured, 1Source and Warrantee Wise, collectively and individually, its officers, directors, partners, agents, affiliates, employees, successors, assigns, and attorneys (solely in their capacity as attorneys for First Assured, 1Source and/or Warrantee Wise) of and from any and all injuries, actions, assessments, claims, controversies, counterclaims, cross-claims, third-party claims, fourth-party claims, (or any other claims under Rule 14 of the Hawaii Rules of Civil Procedure, Colorado Rules of Civil Procedure, or the Federal Rules of Civil Procedure, or rule similar thereto of any other jurisdiction, and including without limitation claims for indemnity, contribution, subrogation, and/or reimbursement), causes of action, suits, liabilities, demands, damages, losses, decrees, awards, liens, disputes, costs, lost profits, loss of services, expenses, fees (including attorneys' and other professionals' fees), judgments and compensation whatsoever, in law or in equity, known or unknown, suspected or unsuspected, asserted or unasserted, patent or latent, which have been or could have been brought, arising out of, incidental to, or in any way connected with PrimeGuard, First Assured, Warrantee Wise, 1Source, or the commencement and/or administration of the PrimeGuard Liquidation, the Ancillary Proceeding, the First Assured Bankruptcy, and the Seizure.

8.5 Liquidator and Ancillary Receiver Release of First Assured, 1Source and Warrantee Wise Related to Commencing the Bankruptcy.

Effective upon the Effective Date, the Liquidator and the Ancillary Receiver, for themselves and their respective successors and assigns, each individually hereby releases, acquits, and forever discharges First Assured, 1Source and Warrantee Wise, collectively and individually, its officers, directors, partners, affiliates, employees, agents, successors, personal representatives, assigns, and attorneys (solely in their capacity as attorneys for First Assured, 1Source and/or Warrantee Wise) of and from any and all injuries, actions, assessments, claims, controversies, counterclaims, cross-claims, third-party claims, fourth-party claims, (or any other claims under Rule 14 of the Hawaii Rules of Civil Procedure, Colorado Rules of Civil Procedure, or the Federal Rules of Civil Procedure, or rule similar thereto of any other

jurisdiction, and including without limitation claims for indemnity, contribution, subrogation, and/or reimbursement), causes of action, suits, liabilities, demands, damages, losses, decrees, awards, liens, disputes, costs, lost profits, loss of services, expenses, fees (including attorneys' and other professionals' fees), judgments and compensation whatsoever, in law or in equity, known or unknown, suspected or unsuspected, asserted or unasserted, patent or latent, based on acts, conduct or omissions occurring on or after May 15, 2006 which have been or could have been brought, arising out of, incidental to, or in any way connected with the commencement and/or administration of the First Assured Bankruptcy. Notwithstanding the foregoing, and except for the administrative claims set forth in Section 4.2, the Liquidator reserves all rights to object to and/or oppose any claims asserted by First Assured, its officers and directors, their successors, personal representatives, heirs and assigns against First Assured and/or PrimeGuard and the Liquidator.

8.6 First Assured, 1Source, and Warrantee Wise Release of Liquidator and Ancillary Receiver Related to the Seizure and Liquidation.

Effective upon the Effective Date, First Assured, 1Source, and Warrantee Wise, collectively and individually, each for itself, its officers, directors, partners, agents, affiliates, employees, successors and assigns, hereby releases, acquits, and forever discharges the Liquidator and the Ancillary Receiver, their respective successors, assigns and attorneys (solely in their capacity as attorneys for the Liquidator) of and from any and all injuries, actions, assessments, claims, controversies, counterclaims, cross-claims, third-party claims, fourth-party claims, (or any other claims under Rule 14 of the Hawaii Rules of Civil Procedure, Colorado Rules of Civil Procedure, or the Federal Rules of Civil Procedure, or rule similar thereto of any other jurisdiction, and including without limitation claims for indemnity, contribution, subrogation, and/or reimbursement), causes of action, suits, liabilities, demands, damages, losses, decrees, awards, liens, disputes, costs, lost profits, loss of services, expenses, fees (including attorneys' and other professionals' fees), judgments and compensation whatsoever, in law or in equity, known or unknown, suspected or unsuspected, asserted or unasserted, patent or latent, which have been or could have been brought, arising out of, incidental to, or in any way connected with the commencement and/or administration of the Seizure, the PrimeGuard Liquidation and the Ancillary Proceeding.

The release in this Section 8.6 includes (but is not limited to) the release of any and all claims to funds seized as part of the Seizure, which are also referenced in Section 1.15 of this Agreement and are the subject of Adversary Proceeding 07-1351-MER.

8.7 Persons Not Being Released by First Assured and the Liquidator and Ancillary Receiver.

The Liquidator does not release and expressly reserves all rights, claims, actions and remedies that could be brought, asserted or maintained in the name of PrimeGuard (except those expressly released herein) including but not limited to pursuing claims and causes of action in the name of Prime Guard against PrimeGuard's officers, directors and Professionals. Further the Liquidator reserves all rights to assert counterclaims and affirmative defenses against First Assured, 1 Source and Warrantee Wise officers, directors and Professional, if those persons assert claims against the Liquidator.

So there is no misunderstanding, members of the Holden Family are being released individually and in all of their respective capacities, including but not limited to their capacity as shareholders, officers and directors of any entity referenced herein.

8.8 Liquidator and Ancillary Receiver Acknowledgment of Holden Family Release by First Assured, 1Source and Warrantee Wise.

The Liquidator and Ancillary Receiver each acknowledges and recognizes that First Assured, 1Source and Warrantee Wise have executed releases for the Holden Family and the officers, directors and Professionals of First Assured, 1Source and Warrantee Wise as set forth herein. After the Effective Date, each will rely on the representation and warranty in Section 8.3 and recognize and continue to honor the releases for the Holden Family and the officers, directors and Professionals of First Assured, 1Source and Warrantee Wise and will not seek to avoid those releases by direct or derivative claims.

8.9 Uniform Contribution Among Tortfeasors Act: Limitations on Persons Discharged Hereunder.

This Agreement shall be subject to the provisions of the Hawaii Uniform Contribution Among Tortfeasors Act, Hawaii Revised Statutes § 663-11 *et seq.* This Agreement and the Releases shall not release or discharge any person other than the released parties, but shall reduce the aggregate of PrimeGuard's Claims and/or claims of First Assured, 1Source and Warrantee Wise against all persons deemed to be the released parties' joint tortfeasors (hereinafter "Joint Tortfeasors"). An individual claim against a Joint Tortfeasor shall be reduced by the extent of the pro rata share of liability of the Released Parties of PrimeGuard's and/or First Assured's and/or 1Source's and/or Warrantee Wise's damages recoverable against all the Joint Tortfeasors or by the amount of the consideration paid by the released parties, whichever is greater. The calculation of the dollar amount of the consideration to be allocated to the release of any individual claim shall be based on the percentage value of that claim in relation to the aggregate value of the claims of PrimeGuard, First Assured, 1Source and/or Warrantee Wise against the Released Parties and the Joint Tortfeasor.

9. **Miscellaneous.**

9.1 Suspension of Interim Deadlines and Discovery. Upon execution of this Agreement, and until the earlier of (i) June 1, 2008, or such later date agreed upon by the Parties reasonably under the circumstances or (ii) all Parties agree in writing that the Effective Date conditions of this Agreement will not be satisfied or waived (the "Termination Date"), the Parties shall cease further depositions and discovery under the First Assured Bankruptcy and the Adversary Proceedings. Further, upon the execution and until such Termination Date the Parties agree to suspend and waive any filing deadlines, existing between or among the parties to this Agreement, for objections, motions, ballots, reports, statements, exhibits, lists, or the like in the First Assured Bankruptcy or any of the Adversary Proceedings. The Parties shall request such approval of this suspension and waiver as appropriate (but not as to non-parties to this Agreement).

9.2 Return of Holden Payment. In the event the Termination Date occurs as described in Section 9.1 above, First Assured's counsel shall deliver the Holden Payment to the Holden Family.

9.3 Holden Payment and Hold Harmless Agreement. The parties agree to defend and hold harmless Jessop & Company, P.C., in its capacity as First Assured's counsel in connection with the deposit of the Holden Payment so long as such payment is held consistent with the terms of this Agreement. In the event of a dispute concerning the Holden Payment before the Holden Payment is transferred under the Ancillary Deposit Agreement on the Dismissal Date, First Assured's counsel may interplead the Holden Payment to the Bankruptcy Court.

9.4 Settlement of Disputed Claim. The Parties acknowledge that this Agreement is a compromise resolution of disputed claims for the purpose of mitigating the costs, uncertainties, and burdens of further litigation and that this Agreement does not constitute an acknowledgment or admission of liability in any way on the part of the Parties hereto, and that the Parties expressly deny any liability or wrongdoing in connection with First Assured, PrimeGuard, the Seizure, PrimeGuard Liquidation and First Assured Bankruptcy.

9.5 Party Warranties as to Reliance, Counsel, Authority, Approvals, Transfers. Each Party warrants and represents that: (a) each Party executed this Agreement of its own free will and that no promise, representation, or inducement has been made or offered, except as set forth herein, and that this Agreement is not executed in reliance upon any statements or representation of any other Party or its representatives concerning any matter, including the nature and extent of the injury, damages or legal liability therefore; (b) it has had the opportunity to review with counsel of its choice this Agreement to obtain independent legal advice with respect to the advisability of executing this Agreement and to investigate the facts relating to this Agreement; (c) it has full power, authority and legal right, on its own behalf and on behalf of its successors and assigns heretofore and hereafter, to execute, deliver and perform all actions required under this Agreement; (d) any and all board, shareholder, contractual, or other requirements which may

be applicable to authorize the execution of this Agreement have been met; and there have been no transfers or assignments of any of the claims covered by the releases herein.

9.6 Choice of Law and Forum. This Agreement shall be construed in accordance with the laws of the State of Hawaii, the State of Colorado, and the Bankruptcy Code, where applicable. The forum to resolve any controversy, claim or dispute arising out of or relating to this Agreement, its enforcement or the breach thereof, shall be in the State of Hawaii or the State of Colorado as appropriate, except that the Bankruptcy Court may serve as such a forum prior to the dismissal of the First Assured Bankruptcy. The Holden Family objects to and does not consent to the jurisdiction of the State of Hawaii over the Holden Family, including but not limited to the jurisdiction of the Liquidation Court.

9.7 Cooperation in Implementing Settlement. The Parties and their respective counsel shall cooperate in the preparation and execution of any petitions, agreements, orders, or other documents necessary to accomplish the terms, purposes and intent of this Agreement and consummating the transactions herein.

9.8 Entire Understanding, Waiver and Modification. This Agreement contains the entire understanding among the Parties with respect to the matters described herein and supersedes all preexisting or simultaneous agreements, oral or written. No breach of any provision hereof can be waived unless in writing. Waiver of any one breach shall not be deemed to be a waiver of any other breach of the same or any other provisions hereof. This Agreement may not be changed, modified or amended except by a written agreement executed by the Parties.

9.9 Counterparts and Originals. This Agreement may be executed in any number of counterparts and by different Parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute one and the same document.

9.10 Binding Effect. This Agreement shall be binding upon, and shall inure to the benefit of, the Parties hereto, their successors-in-interest, heirs, assigns, officers, employees, attorneys, agents, devisees, legatees, personal representatives, trustees, directors, members and shareholders.

9.11 No Third Party Beneficiaries. This Agreement creates no third party beneficiaries and shall not create any rights or benefits that may be enforced by any persons not party to this Agreement.

9.12 No Interpretation Against Drafter. Because each Party has had the opportunity to draft, review and edit the language in this Agreement, no presumption for or against any Party arising out of the drafting of all or any part of the Agreement will be applied in any action or

other proceeding relating to, arising out of, or invoking this Agreement and each Party waives the benefit of any statute or rule of law providing otherwise.

9.13 Inclusion of Recitals and Definitions. The provisions in the Recitals and Definitions section of this Agreement are valid, binding and enforceable.

9.14 Costs and Fees. Each Party shall bear their own costs and fees.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the undersigned have executed this Agreement on the dates indicated.

J.P. Schmidt, in his capacities as Hawaii Insurance Commissioner and as Liquidator of PrimeGuard Insurance Company (collectively, "Liquidator")

By: [signature] for J.P. Schmidt (Commissioner)
Title: Chief Deputy Insurance Commissioner
Date: 12/20/07

By: [signature] for J.P. Schmid (Liquida
Title: Spec. Dep. Liquidator
Date: 12/20/07

Marcy Morrison, Insurance Commissioner for the State of Colorado, in her capacity as Ancillary Receiver of PrimeGuard Insurance Company ("Ancillary Receiver")

By:_____
Title:_____
Date:_____

First Assured Warranty Corporation, debtor in possession ("First Assured")

By:_____
Title:_____
Date:_____

Warrantee Wise, Inc. ("Warrantee Wise")

By:_____
Title:_____
Date:_____

1SourceAutoWarranty.Com, Inc. ("1Source")

By:_____
Title:_____
Date:_____

IN WITNESS WHEREOF, the undersigned have executed this Agreement on the dates indicated.

J.P. Schmidt, in his capacities as Hawaii Insurance Commissioner and as Liquidator of PrimeGuard Insurance Company (collectively, "Liquidator")

By:_____
Title:_____
Date:_____

Marcy Morrison, Insurance Commissioner for the State of Colorado, in her capacity as Ancillary Receiver of PrimeGuard Insurance Company ("Ancillary Receiver")

By: Marcy Morrison
Title: Commissioner
Date: 12/19/07

First Assured Warranty Corporation, debtor in possession ("First Assured")

By:_____
Title:_____
Date:_____

Warrantee Wise, Inc. ("Warrantee Wise")

By:_____
Title:_____
Date:_____

1SourceAutoWarranty.Com, Inc. ("1Source")

By:_____
Title:_____
Date:_____

IN WITNESS WHEREOF, the undersigned have executed this Agreement on the dates indicated.

J.P. Schmidt, in his capacities as Hawaii Insurance Commissioner and as Liquidator of PrimeGuard Insurance Company (collectively, "Liquidator")

By:_____
Title:_____
Date:_____

Marcy Morrison, Insurance Commissioner for the State of Colorado, in her capacity as Ancillary Receiver of PrimeGuard Insurance Company ("Ancillary Receiver")

By:_____
Title:_____
Date:_____

First Assured Warranty Corporation, debtor in possession ("First Assured")

By: [signature]
Title: President
Date: December 24, 2007

Warrantee Wise, Inc. ("Warrantee Wise")

By:_____
Title:_____
Date:_____

1SourceAutoWarranty.Com, Inc. ("1Source")

By:_____
Title:_____
Date:_____

The Holden Family:

Ralph Holden — Date: 12-20-07

Nancy Perna — Date: _____

Mitchell Howell — Date: _____

Ronny Howell — Date: _____

Lisa Holden — Date: 12-20-2007

Amy Sandifer — Date: _____

Joshua Howell — Date: _____

12/20/2007 13:50 FAX 8453368711 WEICHERT REALTORS 002

The Holden Family:

Ralph Holden Date: 12-20-07

Nancy Perna Date: _____

Mitchell Howell Date: _____

Ronny Howell Date: 12-24-07

Lisa Holden Date: _____

Amy Sandifer Date: _____

Joshua Howell Date: _____

The Holden Family:

Ralph Holden Date: _____

Nancy Perna Date: 12-20-2007

Mitchell Howell Date: _____

Ronny Howell Date: _____

Lisa Holden Date: _____

Amy Sandifer Date: _____

Joshua Howell Date: _____

The Holden Family:

Ralph Holden Date: 12-20-07

Nancy Perna Date: _____

Mitchell Howell Date: _____

Ronny Howell Date: _____

Lisa Holden Date: _____

Amy Sandifer Date: 12-21-07

Joshua Howell Date: _____

The Holden Family:

Ralph Holden Date: _____

Nancy Perna Date: _____

Mitchell Howell Date: _____

Ronny Howell Date: _____

Lisa Holden Date: _____

Amy Sandifer Date: _____

Joshua Howell Date: 12/24/07

ANCILLARY DEPOSIT AGREEMENT

This Ancillary Deposit Agreement (this "Deposit Agreement") is entered into this 19th day of December, 2007, between and among First Assured Warranty Corporation ("First Assured") and Marcy Morrison, Commissioner of Insurance of the State of Colorado, in her capacity as Ancillary Receiver of PrimeGuard Insurance Company ("Ancillary Receiver").

1. RECITALS AND DEFINITIONS

1.1. PrimeGuard Insurance Company ("PrimeGuard") is a Hawaii domestic insurance company licensed as a risk retention group.

1.2. First Assured is a Colorado corporation with its principal place of business in Colorado and is an affiliate of PrimeGuard. First Assured was engaged in the business of selling Vehicle Service Contracts ("VSCs"), and its VSCs were insured by PrimeGuard.

1.3. On November 10, 2005, J.P. Schmidt, in his capacities as Hawaii Insurance Commissioner and as Liquidator of PrimeGuard Insurance Company (the "Liquidator") filed an ex parte petition for seizure order in the Circuit Court of the First Circuit for the State of Hawaii ("Liquidation Court") and on November 14, 2005, the Liquidation Court entered a seizure order, which was amended on November 21, 2005 (the "Seizure").

1.4. On or about November 15, 2005, the Commissioner of Insurance of the State of Colorado commenced an ancillary proceeding to the PrimeGuard Liquidation in the District Court, City and County of Denver, Colorado (the "Ancillary Court"), captioned as *Marcy Morrison v. PrimeGuard Insurance Company, Inc.*, Case No. 05-CV-9376 (the "Ancillary Proceeding").

1.5. On December 19, 2005, the Liquidation Court placed PrimeGuard under an Order of Liquidation with a finding of insolvency (the "PrimeGuard Liquidation").

1.6. On June 16, 2006, First Assured filed a voluntary petition under Chapter 11 of the Bankruptcy Code ("First Assured Bankruptcy") in the United States Bankruptcy Court for the District of Colorado, Case No. 06-13669-MER ("Bankruptcy Court"). First Assured is a debtor-in-possession in the First Assured Bankruptcy.

1.7. Dated December 7, 2007, First Assured, the Liquidator and certain other parties, including Warrantee Wise, Inc. ("Warrantee Wise"), 1SourceAutoWarranty.Com, Inc. ("1Source") and Ralph Holden, Nancy Perna, Mitchell Howell, Ronny Howell, Lisa Holden, Amy Sandifer, and

Joshua Howell (collectively, the "Holden Family"), entered into a Settlement Agreement (the "Settlement Agreement"). The terms of this Deposit Agreement are specifically contemplated under the terms of the Settlement Agreement and the Settlement Agreement is hereby incorporated as if fully set forth herein. To the extent of any inconsistency between the terms of the Settlement Agreement and the terms of this Deposit Agreement, the terms of the Settlement Agreement shall control.

1.8. Under the Settlement Agreement, the parties settled and resolved all pending litigation between them, including without limitation the Seizure, the PrimeGuard Liquidation and the Ancillary Proceeding.

1.9. Section 3.5 of the Settlement Agreement provides that First Assured shall deposit the sum of $150,000 in an account designated by the Ancillary Receiver (the "Ancillary Deposit"). Section 3.5 of the Settlement Agreement further provides that the Ancillary Receiver shall distribute One Hundred Forty Thousand dollars ($140,000) of the Ancillary Deposit to "Trade Creditors" (as such term is defined in the Settlement Agreement) and the remaining Ten Thousand Dollars ($10,000) shall be used to pay any expenses associated with the Deposit Agreement or the Ancillary Proceedings. Section 3.5 also provides that the Ancillary Receiver may rely upon the information contained in Exhibit 1 to this Ancillary Deposit Agreement, and that the Ancillary Receiver will be held harmless by the parties if the information listed on Exhibit 1 in incorrect.

1.10. The purpose of this Deposit Agreement is to set forth the terms and conditions for (i) the distribution of the Ancillary Deposit and (ii) the conclusion of the Ancillary Proceeding.

2. AGREEMENTS

NOW THEREFORE, for and in consideration of the mutual agreements and promises herein set forth and for other good and valuable consideration, the sufficiency of which is hereby conclusively acknowledged, it is hereby agreed by and among the Parties as follows:

2.1. Establishment of Deposit Account

The Ancillary Receiver will cause an account designated and established by the Ancillary Receiver in a bank located in Colorado (the "Deposit Account"). The Deposit Account will operate so that deposits may be made by First Assured or any other person authorized by the Ancillary Receiver but withdrawals may be made only by the Ancillary Receiver. The account shall be an asset under the control and direction of the Ancillary Receiver maintained under the jurisdiction of the Ancillary Court in accordance with Colo. Rev. Stat. § 10-3-552.

2.2. Distribution to Trade Creditors

2.2.1. No later than 360 days after the Effective Date of the Settlement Agreement (including First Assured's Deposit of $150,000 in the Ancillary Deposit as set forth in Section 1.9 above), the Ancillary Receiver shall distribute One Hundred Forty Thousand Dollars ($140,000) from the Deposit Account to the Trade Creditors (as such term is defined the Settlement Agreement) in the amounts and at the addresses listed on Exhibit 1 attached hereto. Such payments shall be sent by check using certified mail, return receipt requested.

2.2.2. Prior to making the distributions set forth in Section 2.2.1, the Ancillary Receiver will seek approval from the Ancillary Court and will have received a final, non-appealable order from the Ancillary Court approving such distributions.

2.3. Surplus and Interest Earned on Funds in Deposit Account

2.3.1. The Ancillary Receiver shall distribute Ten Thousand dollars of the Ancillary Deposit along with any interest earned on the Ancillary Deposit to pay any and all costs incurred by the Ancillary Receiver, or associated with establishing, maintaining and closing the Deposit Account. The remaining surplus after such costs have been paid, if any, shall be paid to the Liquidator, after seeking and obtaining approval from the Ancillary Court.

2.3.2. If the amount of surplus and interest is not sufficient to pay the costs incurred by the Ancillary Receiver associated with establishing, maintaining and closing the Deposit Account, the Liquidator agrees to reimburse the Ancillary Receiver for such costs actually incurred, subject to approval by the Liquidation Court.

2.4. Ancillary Court Notice and Approval

2.4.1. **Notice**. The Ancillary Receiver shall file a copy of this Deposit Agreement in the Ancillary Court and shall notify the Ancillary Court after receiving the funds identified herein.

2.4.2. **Approval**. Before making any payments of the funds or otherwise disbursing such funds, the Ancillary Receiver shall seek and receive approval from the Ancillary Court.

2.5. Scope of Ancillary Proceeding and Dismissal

2.5.1. Notwithstanding any provision set forth in Colo. Rev. Stat. § 10-3-501, *et seq.*, the scope of the Ancillary Proceeding and the authority of the Ancillary Receiver shall be limited to the matters addressed in this Deposit Agreement and the Ancillary Receiver shall otherwise be subject to the terms of the Settlement Agreement.

2.5.2. Upon completion of the distribution of the Ancillary Deposit and closing the Deposit Account, the Ancillary Receiver shall file a motion to dismiss the Ancillary Proceeding.

2.6. Choice of Law and Forum

This Deposit Agreement shall be construed in accordance with the laws of the State of Colorado. With the exception of approval from the Liquidation Court for any expenditure by the Liquidator, and except that the Bankruptcy Court may serve as such a forum prior to the dismissal of the First Assured Bankruptcy, the forum to resolve any controversy, claim or dispute arising out of or relating to this Deposit Agreement, its enforcement or the breach thereof, shall be in the Ancillary Court.

2.7. Entire Understanding, Waiver and Modification

This Deposit Agreement and the referenced Settlement Agreement contain the entire understanding between the parties hereto with respect to the matters described herein and supersedes all preexisting or simultaneous agreements, oral or written, recognizing that this Deposit Agreement is being entered into to facilitate the Settlement Agreement and should be construed in conjunction therewith. No breach of any provision hereof can be waived unless in writing. Waiver of any one breach shall not be deemed to be a waiver of any other breach of the same or any other provision hereof. This Deposit Agreement may not be changed, modified or amended except by a written agreement executed by the parties.

2.8. Counterparts and Originals

This Deposit Agreement may be executed in counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute one and the same document.

2.9. Binding Effect

This Deposit Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto, their successors-in-interest, heirs, officers, employees, attorneys, agents, devisees, legatees, personal representatives, trustees, directors, members and shareholders.

2.10. No Third Party Beneficiaries

This Deposit Agreement creates no third party beneficiaries and shall not create any rights or benefits that may be enforced by any persons not party to this Deposit Agreement.

2.11. No Interpretation against Drafter

Because each party had the opportunity to draft, review and edit the language in this Deposit Agreement, no presumption for or against any party arising out of the drafting of all or any part of the Deposit Agreement will be applied in any action or other proceeding relating to, arising out of, or invoking this Deposit Agreement and each party waives the benefit of any statute or rule of law providing otherwise.

2.12. Inclusion of Recitals and Definitions

The provisions in the Recitals and Definitions section of this Deposit Agreement are valid, binding and enforceable.

IN WITNESS WHEREOF, the undersigned have executed this Deposit Agreement on the dates indicated.

Marcy Morrison, Insurance Commissioner for the State of Colorado, in her capacity as Ancillary Receiver of PrimeGuard Insurance Company ("Ancillary Receiver")

By: Marcy Morrison
Title: Commissioner
Date: 12/19/07

First Assured Warranty Corporation ("First Assured")

By: _____
Title: _____
Date: _____

2.10. No Third Party Beneficiaries

This Deposit Agreement creates no third party beneficiaries and shall not create any rights or benefits that may be enforced by any persons not party to this Deposit Agreement.

2.11. No Interpretation against Drafter

Because each party had the opportunity to draft, review and edit the language in this Deposit Agreement, no presumption for or against any party arising out of the drafting of all or any part of the Deposit Agreement will be applied in any action or other proceeding relating to, arising out of, or invoking this Deposit Agreement and each party waives the benefit of any statute or rule of law providing otherwise.

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The provisions in the Recitals and Definitions section of this Deposit Agreement are valid, binding and enforceable.

IN WITNESS WHEREOF, the undersigned have executed this Deposit Agreement on the dates indicated.

Marcy Morrison, Insurance Commissioner for the State of Colorado, in her capacity as Ancillary Receiver of PrimeGuard Insurance Company ("Ancillary Receiver")

By:_____
Title:_____
Date:_____

First Assured Warranty Corporation ("First Assured")

By: [signature]
Title: President
Date: January 11, 2008

01/11/2008 17:41 FAX 8282546646 DUNGAN & ASSOCIATES, PA 002

Exhibit 1
FIRST ASSURED WARRANTY CORPORATION
Allowed Unsecured Trade Creditors

Claim Number	Name	Address	City	State	Zip Code	Claim Amount	Pro-rata Distribution
127	Anton Collins Mitchell, LLP	303 E. 17th Ave, Ste. 600	Denver	CO	80203	$10,165.00	**$1,480.10**
171	Cheli & Lyshak P.L.C.	26154 Woodward Ave	Royal Oak	MI	48068-1257	$632.50	**$92.10**
250	Barnes, David	1205 Hadley St.	St. Louis	MO	63106	$50,265.00	**$7,318.94**
276	National Dealers Warranty, Inc./ Kohnen, Carl F.	650 N. Jefferson St.	Florissant	MO	63031	$83,348.00	**$12,136.05**
327	American Express Travel Related Srvcs Co Inc. Corp. Card c/o Becket & Lee LLP	P.O. Box 3001	Malvern	PA	19355-0701	$344,634.36	**$50,181.17**
337	Ropers, Majeski, Kohn & Bentley	80 North First St.	San Jose	CA	95113	$8,390.95	**$1,221.78**
376	Key Merchant Services, LLC/ Troutman, Andrew Craig, Esq.	7300 Chapman Highway	Knoxville	TN	37920	$423,201.88	**$61,621.15**
465	Maridian Rack & Pinion dba Meridian Auto Parts	10211 Pacific Mesa Blvd. #404	San Diego	CA	92121	$5,602.00	**$815.69**
470	Miles & Stockbridge, P.C. / Kenney, Brian F.Esq.	1751 Pinnacle Dr. Ste. 500	McLean	VA	22102	$31,611.28	**$4,602.82**
478	Continental Volkswagon Inc.	6000 S. Broadway	Littleton	CO	80121	$206.25	**$30.03**
522	Garage Calabrese Inc.	1602 62nd St.	Brooklyn	NY	11204	$3,435.04	**$500.17**
TOTAL						**$961,492.26**	**$140,000.00**

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

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,	S.P. No. 05-1-0443 VSM (Special Proceedings)
Petitioner,	NOTICE OF HEARING AND CERTIFICATE OF SERVICE
vs.	
PRIMEGUARD INSURANCE COMPANY, INC., A RISK RETENTION GROUP,	
Respondent.	

NOTICE OF HEARING

TO: JOHN Y. YAMANO, ESQ.
McCorriston Miller Mukai MacKinnon
Five Waterfront Plaza
500 Ala Moana Blvd., 4th Floor
Honolulu, Hawaii 96813

Attorney for PrimeGuard Insurance Company, Inc.,
A Risk Retention Group, First Assured Warranty Company,
1SourceAutoWarranty.com, Inc. and WarranteeWise, Inc.

TO: All Persons Known to Have an Interest in the Estate of PrimeGuard Insurance Company, Inc.,

NOTICE IS HEREBY GIVEN that LIQUIDATOR'S PETITION FOR FINAL ORDER AND JUDGMENT APPROVING LIQUIDATOR'S SETTLEMENT WITH SHAREHOLDERS' FAMILY AND AFFILIATES AND PETITION FOR GOOD FAITH DETERMINATION OF SETTLEMENT shall come on for hearing before the Honorable Victoria S. Marks, Judge of the

above-entitled Court, in her courtroom at Kaahumanu Hale, 777 Punchbowl Street, Honolulu, Hawaii, on Wednesday, MAR 5 2008, 2008, at 8:30A.m., or as soon thereafter as counsel may be heard.

A copy of the Liquidator's Petition for Final Order and Judgment Approving Liquidator's Settlement with Shareholders' Family and Affiliates and Petition for Good Faith Determination of Settlement, along with a copy of the Settlement Agreement and Mutual Releases dated December 19, 2007 (the "Settlement Agreement"), is posted on the following website: http://www.hawaii.gov/dcca/areas/ins/ins_div_actions/primeguard/

The Settlement Agreement is by and between J.P. Schmidt, in his capacities as Hawaii Insurance Commissioner and as Liquidator of PrimeGuard Insurance Company (collectively, the "Liquidator"); Marcy Morrison, Commissioner of Insurance of the State of Colorado, in her capacity as Ancillary Receiver of PrimeGuard Insurance Company ("Ancillary Receiver"); Warrantee Wise, Inc. ("Warrantee Wise"); First Assured Warranty Corporation ("First Assured"); 1SourceAutoWarranty.com, Inc. ("1Source"); and Ralph Holden, Nancy Perna, F. Mitchell Howell, Ronny Howell, Lisa Holden, Amy Sandifer and Joshua Howell (collectively, the "Holden Family") (collectively the "Parties"). The Settlement Agreement accomplishes the following, among others:

(1) The Settlement Agreement terminates the bankruptcy of First Assured Warranty Corporation ("First Assured") and permits First Assured and PrimeGuard's other affiliates, Warrantee Wise and 1Source, to be liquidated in the PrimeGuard Liquidation in the First Circuit Court of the First Circuit for the State of Hawaii (the "Liquidation Court").

(2) The Settlement Agreement resolves the dispute over possession and ownership of approximately $3.5 million that was seized by the Hawaii Insurance Commissioner, with respect to which First Assured assets an interest, and which was the subject of a pending adversary

proceeding pending in First Assured's bankruptcy while also ensuring that the Liquidator will take sole possession and ownership of such funds and administer them under the general supervision, and the sole and exclusive jurisdiction, of the Liquidation Court;

(3) The Settlement Agreement requires the Holden Family to pay $150,000 to be used for the benefit of First Assured's creditors.

(4) The Settlement Agreement benefits the creditors in that it ensures that claims at the policyholder level will be resolved in the PrimeGuard liquidation, whether such claims were properly filed with the Liquidator or in the First Assured bankruptcy.

(5) The Settlement Agreement permits unsecured creditors to realize a share of $140,000 by means of ancillary deposit distributed in accordance with the Colorado ancillary proceeding.

(6) The Settlement Agreement provides for mutual releases between and among the Parties, resolving pending litigation and potential litigation and resulting in substantial savings in the avoidance of future fees, costs and expenses and the accompanying delays associated with such potential litigation.

With its Petition, the Liquidator is seeking the following relief from the Court:

(1) Entering an Order and Final Judgment approving the Settlement Agreement and authorizing the Liquidator to undertake all actions contemplated by the Settlement Agreement; and

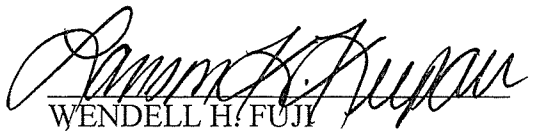
(2) Determining that the settlement entered into between the Parties under the Settlement Agreement was entered into in good faith in accordance with Haw. Rev. Stat., § 663-15.5.

If you desire to oppose the Liquidator's Petition at the hearing scheduled for MAR 5 2008, you must file a written objection on or before pursuant to rules. The objection must clearly specify the grounds upon which objections are based, including the citation of supporting legal

authority, if any. General objections will not be considered and persons that fail to file specific objection by the deadline will not be permitted to present argument at the hearing.

DATED: Honolulu, Hawaii, January 11, 2008.

KOBAYASHI SUGITA & GODA



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

Attorneys for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that on this date, a copy of the foregoing document was duly served upon the following person(s) by means of U.S. Mail Postage prepaid addressed as follows:

JOHN Y. YAMANO, ESQ.
McCorriston Miller Mukai MacKinnon
Five Waterfront Plaza
500 Ala Moana Blvd., 4th Floor
Honolulu, Hawaii 96813

Attorney for
First Assured Warranty Company,
1SourceAutoWarranty.com, Inc. and Warrantee Wise, Inc."

A copy of the foregoing Notice of Hearing Motion will be served on all persons known to have an interest in the Liquidation of PrimeGuard Insurance Company, Inc. at their last known address by mea ns of U.S. mail, postage prepaid, as soon as possible after the date of the hearing has been set. The mailing will be coordinated with a similar notice from First Assured Warranty Corporation, in bankruptcy and a separate certificate of service will be filed with the Court after such mailing has been completed.

DATED: Honolulu, Hawaii, January 11, 2008.

KOBAYASHI SUGITA & GODA

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

Attorneys for Petitioner

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 VSM (Special Proceedings)
Petitioner,	[PROPOSED] ORDER
vs.	
PRIMEGUARD INSURANCE COMPANY, INC., A RISK RETENTION GROUP,	
Respondent.	

[PROPOSED] ORDER

The COURT, having considered the Liquidator's Petition for Final Order and Judgment Approving Liquidator's Settlement with Shareholders' Family and Affiliates and Petition for Good Faith Determination of Settlement, the Memorandum in Support of Petition, the Declaration of Special Deputy Liquidator Paul S.K. Yuen, Exhibit A – the Settlement Agreement, the Notice of Hearing and Certificate of Service, and being otherwise fully advised in the premises, hereby FINDS AND ORDERS as follows:

1. The Liquidator's Petition for Final Order and Judgment Approving Liquidator's Settlement with Shareholders' Family and Affiliates and Petition for Good Faith Determination of Settlement (the "Petition") is granted in its entirety.

2. The Settlement Agreement and Mutual Releases ("Agreement"), attached as Exhibit A to the Petition, is approved.

3. The Liquidator is authorized to implement the Agreement and to undertake all actions contemplated by the Agreement, including but not limited to, the liquidation of First Assured Warranty Corporation, 1SourceAutoWarranty.com, Inc., and Warrantee Wise, Inc. in the PrimeGuard Liquidation proceedings.

4. The settlement detailed in the Agreement was entered into in good faith in accordance with Haw. Rev. Stat. § 633-15.5 and all statutory conditions required thereunder have been satisfied.

DATED: Honolulu, Hawaii, _____, 2008.

_____
JUDGE OF THE ABOVE-ENTITLED COURT