Franklin County Ohio Clerk of Courts of the Common Pleas- 2012 Dec 19 1:52 PM-12CV010970
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IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

MARY TAYLOR,	:	
Ohio Superintendent of Insurance in her	:	
In Her Capacity as Rehabilitator of	:	
Home Value Insurance Company,	:	
	:	**CASE NO. 12CV010970**
Plaintiff,	:	
	:	**Judge Daniel T. Hogan**
vs.	:	
	:	
HOME VALUE INSURANCE COMPANY,	:	
	:	
Defendant.	:	

PLAINTIFF'S MOTION FOR ORDER TERMINATING THE REHABILITATION OF HOME VALUE INSURANCE COMPANY

Plaintiff, Mary Taylor, Ohio Superintendent of Insurance in her capacity as Rehabilitator of Home Value Insurance Company ("HVIC"), respectfully requests pursuant to R.C. 3903.16(B) and related sections that an Order be entered at the hearing on December 21, 2012 terminating the rehabilitation and this case and making other provisions necessary to discharge the Rehabilitator. A Memorandum in Support is attached.

Respectfully submitted,

MIKE DEWINE
Attorney General State of Ohio

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MEMORANDUM IN SUPPORT

On November 16, 2012, this Court entered an Order granting the Liquidator's September 28, 2012 Application for Approval of the Rehabilitation Plan for Home Value Insurance Company ("the Order"). Immediately thereafter, the Rehabilitator issued and mailed the plan payments to all Plan Policyholders on November 19, 2012 and otherwise implemented the Rehabilitation Plan in compliance with the Order. Pursuant to the Order and the Rehabilitation Plan, the Rehabilitator now requests an Order terminating the rehabilitation and making other standard provisions to discharge the Rehabilitator and terminate this case. *See* R.C. 3903.16(B) ("[t]he court may at any time, upon motion of the rehabilitator, enter an order terminating the rehabilitation of an insurer. . . .").

I. Phase 4: Implementation of the Rehabilitation Plan

A. Plan Payments

All but three of the final distribution checks mailed on November 19, 2012 were negotiated prior to the December 10, 2012 deadline in the Rehabilitation Plan. Although no check was returned to the Rehabilitator as undeliverable, two Plan Policyholders did not receive their checks in the mail on or before December 10, 2012, and a third lost his check. After contacting and speaking to the affected Plan Policyholders, the Rehabilitator stopped payment on those three checks. The Rehabilitator re-issued and mailed cashier's checks in the same amounts as the original checks to the affected Plan Policyholders. Therefore, Phase 4 of the Rehabilitation Plan is complete. There are no unclaimed funds to transfer to the Ohio Department of Commerce Division of Unclaimed Funds, except the funds that were transferred under paragraph 8 of the Order.

B. Wells Fargo Commercial Banking and Merchant Processing

The Order approved the Rehabilitation Plan in its entirety. The Rehabilitation Plan cancels all contracts, including the Wells Fargo Merchant Processing Agreement (*See* App. pp. 24-25, Supp. pp. 2-3 and 6)[1]. In compliance with the Order, Wells Fargo Merchant Services, L.L.C. remitted $7,188.40 from the collateral reserve account to the Rehabilitator and closed the Merchant Services account on November 16, 2012. Additionally, Wells Fargo Bank's Commercial Banking Division remitted a total of $40,095.50 from the operating account to the Rehabilitator and closed both HVIC's premium collection and operating accounts and terminated the ACH services. These sums are reflected on the Rehabilitator's current balance sheet attached hereto as Exhibit A.

C. Insurance License Matters and Statutory Deposits

Since the Order, the Rehabilitator confirmed cancellation of the Arizona, Indiana, Georgia, Oregon and Texas licenses. (Supp. pp. 3-4.). The Rehabilitator completed all required filings to surrender and secure cancellation of the licenses in the remaining states of Louisiana, Ohio and Oklahoma, but the Departments of Insurance in those states are still processing the cancellations. (*Id.*). Georgia remitted the HVIC Statutory Deposit to the Rehabilitator on December 18, 2012. The Rehabilitator also filed a Certificate of Surrender with the California Secretary of State in order to terminate HVIC's authority to transact business in California.

Originally, the Rehabilitator thought that she would file all required premium tax returns in 2013. (App. p. 29). However, the Rehabilitator completed all such filings in 2012.

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[1] Throughout this Motion, "App. pp. __" refers to the Rehabilitator's September 28, 2012 Application for Approval of the Rehabilitation Plan for Home Value Insurance Company. "Supp. p. __" refers to the Rehabilitator's November 14, 2012 Supplemental Memorandum In Support of Application for Approval of the Rehabilitation Plan for Home Value Insurance Company.

D. Remaining Class 1 and Class 10 Claims

The Rehabilitation Plan implements the priority distribution scheme in R.C. 3903.42 and proposes to pay all creditors of HVIC 100% of the value of their claims. (App. p.2; Supp. pp. 11-12; Order ¶¶ 10-12). The Order requires that the Court approve the value and payment of the Rehabilitator's remaining Class 1 claim and the Class 10 shareholder claim to the remaining surplus at the time this case is terminated. (Order ¶13).

1. Rehabilitator's Class 1 Claim for Administrative Expenses Actually Paid from November 14, 2012 to December 19, 2012

The Order approved all of the Rehabilitator's administrative expenses incurred from the inception of rehabilitation through November 13, 2012. (Order ¶12, Supp. Exh. B-1). The Rehabilitator has paid additional administrative expenses since November 13, 2012. Those expenses are accounted for in Exhibit B to this Motion and primarily consist of wages paid to Deputy Rehabilitators and additional fees, taxes and other penalty amounts paid to various state insurance departments associated with the surrender of HVIC's certificates of authority. Since the Order, Deputy Rehabilitators have in fact charged more time against the HVIC rehabilitation estate than the Rehabilitator estimated at the time of the Order. This is largely because it took significantly more time than previously estimated in Supp. Exh. B-2 for the Rehabilitator to coordinate with the various state insurance departments and complete all required filings and pay all fees, taxes and penalties (some of which were not discovered until after the surrenders were filed) necessary to secure cancellation of the HVIC licenses.

2. Rehabilitator's Final Reserve for Payment of Class 1 Administrative Expenses Incurred or Paid after December 19, 2012

The second component to the Liquidator's Class 1 claim is her Final Reserve for payment of administrative expenses that will not be incurred until after the rehabilitation is terminated.

(*See* Supp. pp. 8-9). A Final Reserve from the HVIC current asset balance must be made now in order for the Rehabilitator to have money to pay HVIC's post-closure administrative expenses, including, for example, salaries and other expenses incurred in securing and administering the surrender of the remaining HVIC insurance licenses; preparation and filing of HVIC's 2012 federal tax returns in 2013; compliance with various records retention and destruction schedules, some of which run through 2019; and, other post-closing administrative obligations.

The Rehabilitator's internal controls include a distribution accounting procedure implemented in 1995 for estimating future administrative expenses as of a date certain (in this case December 19, 2012), prior to the final distribution of assets. The Rehabilitator conservatively estimates that the administrative expenses necessary to conclude the administration of this rehabilitation after December 19, 2012 total $18,168.90. The items that comprise this Final Reserve are detailed in Exhibit C.

The Order approved the Rehabilitation Plan. The Rehabilitation Plan incorporates the Rehabilitator's long standing Administrative Operating Procedures updated and approved on December 21, 2010 in *Taylor, Supt. of Ins. in her capacity as Liquidator of LMI Ins. Co. v. LMI Ins. Co.*, Franklin C.P. Case No. 00CVH03-2431 ("the updated AOP") for the administration and accounting of the Final Reserve. (Supp. p. 9). Accordingly, the Final Reserve will be transferred to LMI Insurance Company on December 21, 2012 (the day the Rehabilitator will close the HVIC Columbus Account) as a prepayment to LMI of HVIC's post-closure administrative expenses in exchange for LMI's assumption and administration of the remaining administrative expense obligations of HVIC. (*Id.*). The payment and receipt of these funds will be reflected in the LMI periodic accounting reports filed in the LMI Liquidation Case, but the expenditures of the funds are not separately tracked, accounted for or reported by the Liquidator for LMI or

HVIC pursuant to the provisions of paragraph 3 on page 8 of the updated AOP that apply to Closed and Closing Estates.

3. Valuation and Payment of Class 10 Shareholder Claim

The value of the Class 10 claim is the surplus that remains on the December 21, 2012 termination date after payment of the Liquidator's Class 1 administrative expenses set forth above. After subtracting the combined $31,645.29 Class 1 Administrative Expenses described above (which is the sum of (i) $13,476.39 for paid expenses itemized on Exhibit B and (ii) the $18,168.90 Final Reserve itemized on Exhibit C) from HVIC's $1,861,314.53 current asset balance reflected on the balance sheet attached hereto as Exhibit A, the Rehabilitator has a surplus of $1,829,669.24. The Rehabilitator proposes to pay that sum on December 21, 2012 via cashier's check made payable to TriplePoint Capital, LLC and mailed to TriplePoint Capital, LLC on the 31st day after the termination order is entered in this case, unless an appeal is filed or other unforeseen circumstances occur requiring adjustment to the Class 1 claim. The Rehabilitator will return to sender any other funds received after the termination of this case.

II. Phase 5: Discharge, Dissolution and Closure

All other matters involving the HVIC rehabilitation are substantially finalized, other than several ministerial functions set forth below, which cannot be performed until after the termination of the rehabilitation.

A. Final Accounting and Final Independent Auditor's Report

Primary post-closure ministerial functions include the preparation of a final accounting and a final independent auditor's report of the estate. This final accounting will be filed upon its completion in the first quarter of 2013. The first and final independent auditor's report for the

period August 31, 2012 to December 31, 2012, will be filed with the Court upon its completion in or around September 2013.

B. Final Federal Income Tax Return for Year End 2012

Because the final distribution and final closing of the estate will take place in 2012, a final Form 1120[redacted]C tax return for the calendar year ending December 31, 2012 will be prepared and file[redacted]he Internal Revenue Service ("IRS") post-closing in 2013.

C. Motion to Approve Disposition of Insurer's Records

The Rehabilitator's internally implemented document retention schedule for all open estates calls for a Court Order authorizing the destruction of the vast majority of records at the time a liquidation or rehabilitation case is terminated, unless required to be retained for tax and other financial reporting purposes. In this case, the Rehabilitator notified the United States Department of Justice ("DOJ") of her intent to destroy all pre-rehabilitation and post-rehabilitation records immediately upon entry of the order terminating this case beginning on December 30, 2012. Having heard no response or objection from DOJ, the Liquidator now requests, consistent with her current schedule, that this Court relieve her of any obligation she may have to retain, and authorize her to immediately destroy: (1) any and all remaining pre-rehabilitation books, records and documents in any medium, including all electronic records of HVIC; and (2) all post-liquidation books, records and documents in any medium (including electronic records), except for certain, limited tax and accounting records that are not required to be maintained pursuant to applicable laws. This will result in the destruction immediately of all remaining HVIC Rehabilitator/Rehabilitation staff records, including but not limited to, all work papers of the Rehabilitator and her staff, except for certain, limited tax and accounting records.

The Liquidator strives to use secure methods of destruction. The vast majority of remaining paper records in this case will be securely destroyed by Shred-It. This vendor assures the Rehabilitator that it destroys paper records by shredding or incineration. The Rehabilitator deletes or otherwise removes electronic records from her own servers and systems. In this case, the Rehabilitator does not have any computers from HVIC or dedicated solely to HVIC; therefore, the Rehabilitator will not make provisions in this case for the secure destruction of computers. The Rehabilitator has backup tapes from Home Value Protection, Inc.'s and/or HVIC's pre-rehabilitation computer systems that she will securely destroy at termination of this rehabilitation.

D. Dissolution of HVIC

The Rehabilitation Plan is not to restore HVIC. *See* R.C. 3903.14(B). Rather, the plan is a wind up and termination of HVIC's insurance operations and business affairs through the Rehabilitation Plan, which can be done without triggering the statutes specific to liquidation because there is a surplus. Accordingly, the Rehabilitation Plan calls for the dissolution of the corporate entity of HVIC by this Court's order when the rehabilitation is terminated and the Rehabilitator discharged. (Supp. p. 9).

E. Closing the HVIC Columbus Bank Account

Once the corporate entity of HVIC is dissolved via the termination order, HVIC cannot hold bank accounts. This is true of all closed estates. The Rehabilitator closes the bank accounts upon closure of the estate and administers and accounts for the administrative reserve pursuant to the above-described AOP. Accordingly, the Rehabilitator requests authority to immediately close the remaining HVIC bank accounts on or after December 21, 2012.

III. Conclusion

For the reasons set forth above, the Liquidator respectfully requests that this Court enter a final Order:

1. Granting this Motion in its entirety.

2. Finding that the Rehabilitator shall return to sender any funds received after the termination of this case.

3. Approving the valuation, calculation and payment of the Liquidator's Class 1 administrative expense claim, including the amount of the Final Reserve, as set forth in this Motion.

4. Approving the valuation and calculation of Home Value Protection, Inc.'s Class 10 claim as set forth in this Motion and approving the payment of that sum to TriplePoint Capital, LLC via cashier's check on the 31st day following entry of the order terminating this case, unless an appeal is filed or other unforeseen circumstances occur requiring adjustment to the Class 1 claim.

5. Ratifying the cancellation of all HVIC contracts.

6. Authorizing the Rehabilitator or her designee to retain limited authority for the following purposes: (a) taking all actions necessary to finalize the surrender and termination of all HVIC certificates of authority and insurance licenses in various states; (b) filing a final accounting with the Court; (c) filing a final independent audit report with the Court; (d) executing the Final Form 1120[redacted]C 2012 tax return and filing the return with the Internal Revenue Service in the [redacted] provided by law; (e) executing a Release Agreement with the United States [redacted]rica and filing it with this Court for approval; and (f) taking all related actions as authorized or as deemed necessary and appropriate by the Rehabilitator to wind up HVIC and the rehabilitation of HVIC, implement the Rehabilitation Plan and carry out various sections of R.C. Chapter 3903 and prior orders of this Court.

7. Directing the Rehabilitator to immediately close HVIC bank accounts, whereupon the Final Reserve will be prepaid to the LMI Liquidation Estate pursuant to the updated AOP referenced in the Rehabilitation Plan and this Motion, which provide that the payment and receipt of these and any other reserve funds will be accounted for in the LMI periodic accountings, but the expenditure of it is not separately tracked, accounted for or reported by LMI or HVIC pursuant to the practice set forth in the updated AOP.

8. Ordering that the corporate entity of Home Value Insurance Company is dissolved.

9. Approving and directing the destruction on or after December 21, 2012 of the pre-rehabilitation and post-rehabilitation books, records and documents of HVIC, the Rehabilitator or anyone else as follows: (a) remaining pre-rehabilitation books and records in any medium, shall be immediately destroyed; (b) all remaining post-rehabilitation books and records in any medium that are not specifically required by law to be maintained for tax and accounting purposes shall be immediately destroyed, and (c) finding that the Rehabilitator has no duty or obligation to preserve any books, records or documents in any medium or anything else related to HVIC as possible discovery, evidence or other production in any future litigation, bankruptcy, investigation or contested matter.

10. Finding that HVIC's remaining physical assets, if any, are uneconomic to rehabilitate, liquidate or distribute and approving and authorizing the Rehabilitator to abandon such physical assets.

11. Ordering the abandonment of uncollected claims.

12. Discharging the Rehabilitator and providing protections afforded under R.C. 9.86, 9.87, 109.36 to 109.366 [109.36.6] to the Rehabilitator her predecessors and successors, any and all former and current deputy rehabilitators, any former and current employees of the Ohio Department of Insurance, any former or current employee appointed by the Superintendent as Rehabilitator or Deputy Rehabilitator, and any former or current employee who serves under the Rehabilitator.

13. Releasing the Rehabilitator, her predecessors, successors and any and all current and former deputy rehabilitators, current and former agents or employees of the Rehabilitator or the Office of the Ohio Insurance Liquidator and current and former employees of the Ohio Department of Insurance, of all claims and liability of any nature whatsoever and whenever incurred (including but not limited to costs, expenses and attorneys' fees) relating to, involving or arising out of any and all actions, decisions, conduct, transactions, or events that were alleged or that could have been alleged in the HVIC rehabilitation proceedings or in any other litigation that in any way relates to or involves HVIC, the HVIC rehabilitation, or any proceedings related to HVIC or the HVIC rehabilitation proceedings.

14. Finding that all other matters regarding the rehabilitation of HVIC have been finalized in accordance with the Orders of this Court, and effective immediately, the HVIC rehabilitation is terminated and this case is terminated.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing *Plaintiff's Motion for Order Terminating the Rehabilitation of Home Value Insurance Company* was posted on the Rehabilitator's website, **www.ohliq.com**, under Open Rehabilitations – Home Value Insurance Co. substantially contemporaneous with the filing of this Motion and was served upon the following via facsimile and regular U.S. Mail, postage prepaid, on this 19th day of December, 2012:

Sharon C. Williams
Trial Attorney
Department of Justice
Civil Division
1100 L Street, N.W., Room 10016
Washington, D.C. 20005
Facsimile: (202) 307-0494
Attorneys for The United States of America

and was also e-mailed to Sharon.Williams@usdoj.gov on December 19, 2012.

/s/ W. Scott Myers
W. Scott Myers (0040686)

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Home Value Insurance Company, in Rehabilitation

Balance Sheet

	December 19, 2012	November 13, 2012	August 31, 2012
Assets			
Cash and invested assets			
Cash	$ 1,861,314.53	43,661.21	$ 1,600,106.86
Short-term investments	-	2,491,002.21	-
Total cash and invested assets	**1,861,314.53**	**2,534,663.42**	**1,600,106.86**
Uncollected premiums	-	29,682.96	35,162.93
WFB - Merchants Reserves	-	7,144.14	6,404.94
Accrued investment income	-	-	5,181.42
Commission receivable	-	-	2,714.84
Restricted - Statutory Deposits	-	25,000.66	1,037,137.95
Total assets	**$ 1,861,314.53**	**$ 2,596,491.18**	**$ 2,686,708.94**
Liabilities			
Plan Payments to Policyholders	$ -	$ 220,121.38	$ -
Unearned premiums	-	39,356.59	39,356.59
Payable to Parent	-	438,453.86	422,663.65
Taxes, licenses and fees	-	3,156.38	963.24
Other liabilities	-	31,277.54	52,373.75
Total liabilities	**$ -**	**$ 732,365.75**	**$ 515,357.23**
Capital and deficit			
Common capital stock (net)	2,500,000.00	$ 2,500,000.00	2,500,000.00
Aggregate write in for special surplus	10,952.26	10,952.26	10,952.26
Paid-in surplus	8,300,000.00	8,300,000.00	8,300,000.00
Unassigned surplus (deficit)	(8,949,637.73)	(8,946,826.83)	(8,639,600.55)
Total capital and deficit	**1,861,314.53**	**$ 1,864,125.43**	**2,171,351.71**
Total liabilities and capital and deficit	**$ 1,861,314.53**	**$ 2,596,491.18**	**$ 2,686,708.94**

FINAL EXHIBIT A

Home Value Insurance Company, in Rehabilitation

Rollforward of Total Cash and Invested Assets

Cash	$ 43,661.21
Short-term investments	2,491,002.21
Balance 11.13.2012	**$ 2,534,663.42**
Less Disbursements: 11.14.12 thru 12.19.12	
Plan Payments to Policyholders	$ (220,121.38)
Plan Payments to Non-Policyholders Class 1, 5 and 6	(472,305.78)
Administrative Expenses	(13,476.39)
Sub-total	**$ (705,903.55)**
Add Receipts 11.14 thru 12.19.12:	
Recovery from Well Fargo Merchant Reserve	$ 7,188.40
Return of GA Special Deposit	24,933.64
Miscellaneous Receipts (Interest & Bank Refunds)	432.62
Sub-total	**$ 32,554.66**
Remittance of Funds after 11.16.2012	
From Wells Fargo Bank Commercial Account	$ (40,095.50)
To HVIC Columbus Account (JP Morgan Chase)	40,095.50
	$ -
Total Cash & Invested Assets @ 12.19.2012	**$ 1,861,314.53**

FINAL EXHIBIT B

HOME VALUE INSURANCE COMPANY, in REHABILITATION
Administrative Expenses Paid
From November 14, 2012 through December 19, 2012

Payee	Amount	Description
Outside Data Processing (ADP)	$ 4.38	Consulting Fees and Other Outside Contracts
Salaries Regular + Salaries Other	6,634.27	Salaries
Employee Insurance Benefits	87.61	Employee Benefits
Office Parking Expense	12.75	Employee Benefits
Empl. Relations Other	1.20	Employee Benefits
Ins Depts: Licenses & fees	3,870.00	Taxes, License & Fees
State Premium Tax	254.34	Taxes, License & Fees
FICA Tax	172.08	Payroll and Other Taxes:
Rent on Leased Properties	1,500.00	Rent and Rent Items
Trash & Recycling	0.46	Rent and Rent Items
Postage	147.95	Postage, Freight, Telephone and Internet
Telephone & Fax	3.56	Postage, Freight, Telephone and Internet
Internet - Internet Access	8.92	Postage, Freight, Telephone and Internet
Banking fees and Investment Expense	776.90	Banking and Investment Expense
Office Supplies	0.96	Other Expenses
Maintenance / Repair - Facility and FF&E	1.01	Other Expenses
Total Paid Administrative Expenses	**$ 13,476.39**	

FINAL EXHIBIT C

HOME VALUE INSURANCE COMPANY, in REHABILITATION

RESERVE FOR FUTURE ADMINISTRATIVE EXPENSES
FOR THE PERIOD 12/19/2012 THROUGH CLOSE

Compensation:		
Salaries	$	9,329.37
Employee Benefits		823.57
Payroll and Other Taxes		1,397.75
Professional Fees:		
Tax Preparation and Audit Fees		2,000.00
Consulting Fees and Other Outside Contracts		3,000.00
Other Expenses of Administration of Company and its Property:		
Rent and Rent Items		-
Postage, Freight, Telephone and Internet		637.16
Banking and Investment Expense		604.08
Other Expenses		376.97
Ohio Department of Commerce Division of Unclaimed Funds		-
RESERVE FOR FUTURE ADMINISTRATIVE EXPENSES	$	18,168.90