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Insurance Commissioner of the State of Hawaii

FIRST CIRCUIT COURT  
STATE OF HAWAII  
FILED

DEC 19 2005 2:48 PM  
Date Time

E. Y. NITTA  
Clerk

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT  
STATE OF HAWAII

J.P. SCHMIDT, in his capacity as Insurance	)	S.P. No. 05-1-0443 VSM
Commissioner of the State of Hawaii,	)	(Special Proceeding)
	)	
Petitioner,	)	
	)	ORDER OF LIQUIDATION
vs.	)	
	)	
PRIMEGUARD INSURANCE COMPANY,	)	
INC., A RISK RETENTION GROUP.,	)	
	)	Judge: Hon. Victoria S. Marks
Respondent.	)	
	)	

ORDER OF LIQUIDATION

This matter came for consideration before the Honorable Victoria S. Marks, on this date,  
on Petitioner J.P. Schmidt's, in his capacity as Insurance Commissioner of the State of Hawaii

I do hereby certify that this is a full, true, and  
correct copy of the original on file in this office.

Clerk, Circuit Court, First Circuit

("Commissioner"), Motion for Liquidation Order. The Commissioner appeared through counsel, Department of the Attorney General and Kobayashi, Sugita & Goda. Respondent filed its statement confirming that the grounds for liquidation are satisfied and that the Motion for Liquidation Order was unopposed and waived a hearing on the matter.

Based upon the Commissioner's showing, through the Motion for Liquidation Order, including the attached memorandum in support of motion, declarations and exhibits, and Respondent's Response to Motion for Liquidation Order,

THE COURT HEREBY SPECIFICALLY FINDS AND ORDERS, JUDGES AND DECREES as follows:

1. Respondent PRIMEGUARD INSURANCE COMPANY, INC., A Risk Retention Group ("Respondent PrimeGuard") is a Hawaii corporation and licensed as a Class 3 risk retention captive insurance company as defined in Haw. Rev. Stat., § 431:19:101 *et seq.* Pursuant to Haw. Rev. Stat. § 431:15-102, Respondent PrimeGuard is a person covered by the Hawaii Insurers Supervision, Rehabilitation and Liquidation Act, Haw. Rev. Stat. § 431:15-101 *et seq.* (the "Act").

2. Pursuant to Haw. Rev. Stat. § 431:15-104, venue and jurisdiction are proper in this court.

3. Respondent PrimeGuard is insolvent as that term is defined in the Act. Specifically, pursuant to Haw. Rev. Stat. § 431:15-103, Respondent PrimeGuard's admitted assets do not exceed its liabilities plus the greater of: (a) any capital and surplus required by law for its organization; or (b) the total par or stated value of its authorized and issued capital stock. As set forth in the statement filed by Respondent PrimeGuard, PrimeGuard does not contest or dispute the fact that it is insolvent as defined in Haw. Rev. Stat. § 431:15-103. In addition, Respondent PrimeGuard is in a condition that the further transaction of business would be hazardous,

financially, to its policyholders, creditors or the public.

4. Respondent PrimeGuard's insolvency and hazardous financial condition satisfy the grounds for entry of an order of liquidation pursuant to Haw. Rev. Stat. § 431:15-306 and Respondent PrimeGuard is hereby declared insolvent and placed under this Order of Liquidation.

5. Pursuant to Haw. Rev. Stat. § 431:15-307, Respondent PrimeGuard's business is ordered liquidated. The Commissioner, and the Commissioner's successors in office, is appointed as Liquidator. The Liquidator shall forthwith take possession of the assets of Respondent PrimeGuard and administer them under the general supervision of this Court. The Liquidator shall be vested by operation of law with title to all of the property, contracts, and rights of action and all of the books and records of Respondent PrimeGuard, wherever located, as of the entry of the Order of Liquidation. The assets of Respondent PrimeGuard include, but are not limited to, those accounts identified in this Liquidation Order as well as those held by First Assured Warranty Corporation and/or 1SourceAutoWarranty.com (collectively "First Assured") as fiduciaries and in trust for Respondent PrimeGuard. To the extent the funds in those accounts have not been transferred to accounts held in the name of Respondent PrimeGuard, the Liquidator is ordered to take all steps necessary and appropriate to arrange for the transfer of such accounts. The filing or recording of this Liquidation Order with the clerk of the Circuit Court of the First Judicial Circuit and at the Bureau of Conveyances shall impart the same notice as evidence of title.

6. Pursuant to Haw. Rev. Stat. § 431:15-307(b), upon issuance of this Order of Liquidation and effective as of the date of this Order of Liquidation, the rights and liabilities of Respondent PrimeGuard and of its creditors, policyholders, shareholders, members and all other persons interested in its estate are fixed, except as otherwise provided in Haw. Rev. Stat. §§ 431:15-308

and 431:15-327.

7. In accordance with Haw. Rev. Stat. § 431:15-307(e), the Liquidator shall provide accounting to the court on a quarterly basis.

8. The Liquidator has all powers and authority as set forth in the Liquidation Act, including but not limited to, Haw. Rev. Stat. § 431:15-310, which provides that the Liquidator shall have the power to:

- a. Appoint a special deputy to act for the Liquidator under the Act, and to determine the special deputy's reasonable compensation. The special deputy shall have all powers of the Liquidator granted by Haw. Rev. Stat. § 451:15-310. The special deputy shall serve at the pleasure of the Liquidator.
- b. Employ employees and agents, legal counsel, actuaries, accountants, appraisers, consultants, and such other personnel as the Liquidator deems necessary to assist in the Liquidation. Such authority includes, but is not limited to, the ability to pay, or cause to be paid, directly or indirectly, some or all of the employees of First Assured who have been providing administrative services for the benefit of Respondent PrimeGuard and whose work is necessary and appropriate to the liquidation of Respondent PrimeGuard so long as such amounts are consistent with amounts previously charged to First Assured.
- c. Fix the reasonable compensation of employees and agents, legal counsel, actuaries, accountants, appraisers and consultants, with the approval of the court.
- d. Pay reasonable compensation to persons appointed, and defray from the funds or assets of Respondent PrimeGuard all expenses of taking possession of, conserving, conducting, liquidating, disposing of, or otherwise dealing with the business and property of the insurer. In the event that the property of Respondent PrimeGuard does not contain sufficient cash or liquid assets to defray the costs incurred, the Commissioner may advance the costs so incurred out of any appropriation for the maintenance of the insurance division. Any amounts so advanced for expenses of administration shall be repaid to the Commissioner for the use of the insurance division out of the first available moneys of Respondent PrimeGuard.
- e. Hold hearings, subpoena witnesses to compel their attendance, administer oaths, examine any person under oath, and compel any party to subscribe to their testimony after it has been correctly reduced to writing, and in connection therewith require the production of any books, papers, records or other documents that the Liquidator deems relevant to the inquiry.
- f. Collect all debts and moneys due and claims belonging to Respondent PrimeGuard,

wherever located, and for this purpose to: (i) institute timely action in other jurisdictions, to forestall garnishment and attachment proceedings against such debts; (ii) do such other acts as are necessary or expedient to collect, conserve or protect its assets or property, including the power to sell, compound, compromise or assign debts for purposes of collection upon such terms and conditions as the Liquidator deems best; and (iii) pursue any creditor's remedies available to enforce its claims.

- g. Conduct public and private sales of the property of Respondent PrimeGuard.
- h. Use assets of the estate of Respondent PrimeGuard to transfer policy obligations to a solvent assuming insurer, if the transfer can be arranged without prejudice to applicable priorities under Haw. Rev. Stat. § 431:15-332.
- i. Acquire, hypothecate, encumber, lease, improve, sell, transfer, abandon, or otherwise dispose of or deal with, any property of Respondent PrimeGuard at its market value or upon such terms and conditions as are fair and reasonable. The Liquidator shall also have power to execute, acknowledge, and deliver any and all deeds, assignments, releases and other instruments necessary or proper to effectuate any sale of property or other transaction in connection with the liquidation.
- j. Borrow money on the security of Respondent PrimeGuard's assets, or without security, and to execute and deliver all documents necessary to that transaction for the purpose of facilitating the liquidation.
- k. Enter into such contracts as are necessary to carry out the order to liquidate, and affirm or disavow any contracts to which the insurer is a party.
- l. Continue to prosecute and institute in the name of Respondent PrimeGuard or in the Liquidator's own name any and all suits and other legal proceedings in this state and elsewhere, and abandon the prosecution of claims the Liquidator deems unprofitable to pursue further. If Respondent PrimeGuard is dissolved under Haw. Rev. Stat. § 431:15-309, the Liquidator shall have the power to apply to any court in this state or elsewhere for leave to substitute the Liquidator for the Respondent PrimeGuard as plaintiff.
- m. Prosecute any action that may exist on behalf of the creditors, members, policyholders or shareholders of Respondent PrimeGuard against any officer of Respondent PrimeGuard or any other person.
- n. Remove any or all records and property of Respondent PrimeGuard to the offices of the Commissioner or to such other place as may be convenient for the purposes of efficient and orderly execution of the Liquidation.
- o. Deposit in one or more banks in this states such sums as are required for meeting current administration expense and dividend distributions.

- p. Invest all sums not currently needed, unless the court orders otherwise.
- q. File any necessary documents for recordation in the Bureau of Conveyances or other appropriate office or elsewhere where property of Respondent PrimeGuard is located.
- r. Assert all defenses available to Respondent PrimeGuard as against third persons, including statutes of limitations, statutes of frauds, and the defense of usury. A waiver of any defense by Respondent PrimeGuard after the petition for liquidation was filed shall not bind the Liquidator.
- s. Exercise and enforce all the rights, remedies, and powers of any creditor, shareholder, policyholder, or member, including any power to avoid any transfer or lien that may be given by the general law and that is not included with Haw. Rev. Stat. §§ 431:15-315 through 431:15-317.
- t. Intervene in any proceeding wherever instituted that might lead to the appointment of a receiver or trustee, and act as the receiver or trustee whenever the appointment is offered.
- u. Enter into agreements with any receiver or commissioner of any other state relating to the rehabilitation, liquidation, conservation or dissolution of Respondent PrimeGuard.
- v. Exercise all powers now held or hereafter conferred upon liquidators or receivers by the laws of this state not inconsistent with the Act.
- w. Do such other acts not specifically enumerated in this Order of Liquidation and the Act, or otherwise provided for, as may be necessary or appropriate for the accomplishment of or in aid of the purpose of liquidation of Respondent PrimeGuard.

9. Pursuant to Haw. Rev. Stat. §431:15-106, any officer, manager, director, trustee, owner, employee, or agent of Respondent PrimeGuard, or any other persons with authority over, or in charge of any segment of Respondent PrimeGuard's affairs, shall cooperate with the Commissioner, Liquidator or receiver in this proceeding, related proceedings, and any investigation preliminary to this proceeding. The term "person" in this paragraph includes any person who exercises control directly or indirectly over activities of Respondent PrimeGuard through any holding company or other affiliate of the insurer and includes, but is not limited to, all officers, managers, directors, trustees, owners, employees or agents of First Assured Warranty Corporation, 1SourceAutoWarranty.com, WarranteeWise, Inc. and any other affiliate of

Respondent PrimeGuard. The duty and obligation to cooperate shall include, but shall not be limited to the following:

- a. To reply promptly in writing to any inquiry from the Commissioner, Liquidator or receiver requesting such a reply.
- b. To make available and deliver to the Commissioner, Liquidator, or receiver any books, accounts, documents, or other records, or information or property of or pertaining to Respondent PrimeGuard and in its possession, custody and control, including but not limited all funds that were, or should have been, held in separate trust accounts for the benefit of PrimeGuard.
- c. Specifically, the banks set forth below shall cooperate with the Liquidator and receiver in order to facilitate the transfer of any assets being held for the benefit of Respondent PrimeGuard, to the extent such transfers have not already occurred:

Financial Institution	Account No.
<b>First Assured Warranty Corp.</b>	
Sun Trust Bank P.O. Box 622227 Orlando, Florida 32862-2227	17510255804
Northern Trust Northern Trust Bank of Fla. N.A. 1100 East Las Olas Blvd. Fort Lauderdale, Florida 33301-2387	1430007733 (CD) 23-36961 1430007942 (CD)
Independent Bank 230 W. Main Street Ionia, MI 48846	0001031528
Wachovia One Wachovia Center Charlotte, N.C. 28288-0013	74143407768
WI Dept of Administration State Controller's Office – CMO P.O. Box 7932 Madison, WI 53707-7932	CUSIP AMCD9485 (CD) CUSIP 9AMCD1ME9 (CD)
Union Planters Bank NA Trust Group P.O. Box 523 Belleville, IL 62222-0523	5040010508 (CD)

Colorado Bank & Trust P.O. Box 499 La Junta, CO 81050	206970 699-321-4
Key Bank P.O. Box 22114 Albany, NY 12201-2114	769681008264 (Operating) 769681001681 (Checking) 769681008280 (Claims Acct) 769681008272 (Payroll) 765070008006 (Credit Card) 765070008006 (ACH/Merchant) 310769681008264
<b>1SourceAutoWarranty.com, Inc.</b>	
Sun Trust Bank P.O. Box 622227 Orlando, Florida 32862-2227	17510211233
Key Bank P.O. Box 22114 Albany, NY 12201-2114	769681008322 (Money Mkt) 769681001681 (Credit Card) 765070006588 (NY Fund Res) 765070005143 (Coll. Acct)

10. No person shall obstruct or interfere with the Commissioner, Liquidator or receiver in the conduct of this delinquency proceeding or any investigation preliminary or incidental hereto.

11. Pursuant to Haw. Rev. Stat. § 431:15-105, the following injunctions and restraining orders are entered and the Liquidator may seek further injunctions, restraining orders and orders as necessary and proper under the Act. Application of these injunctions includes, but is not limited to, all persons identified in Paragraph 9 of this Liquidation Order.

- a. Respondent PrimeGuard is enjoined and restrained from the transaction of further business. Respondent PrimeGuard may not insure any warranties issued by First Assured, 1Source or any other warranty company dated after the entry of this Liquidation Order. First Assured, 1Source and any other warranty company are hereby enjoined from issuing any warranties that identify Respondent PrimeGuard as an insurer of such warranties. To the extent any such warranties are issued after the date of this Liquidation Order, to the extent those warranties identify Respondent PrimeGuard as an insurer, those warranties are void and unenforceable as to Respondent PrimeGuard.
- b. No property belonging to Respondent PrimeGuard may be transferred with the exception of any funds held by First Assured, 1Source or any other affiliate where those funds are being held for the benefit of Respondent PrimeGuard as part of the Loss Reserve Trust Funds that were required to be established for the benefit of



Respondent PrimeGuard. All such funds shall be transferred to Respondent PrimeGuard as soon as possible after entry of this Liquidation Order.

- c. Interference with the Liquidator or receiver or with this proceeding is prohibited.
- d. Waste of Respondent PrimeGuard's assets is prohibited.
- e. Dissipation and transfer of bank accounts is prohibited, except as expressly provided for herein or as designated by the Liquidator or receiver.
- f. With the exception of actions brought or expressly approved by the Liquidator, the institution or further prosecution of any actions or proceedings against Respondent PrimeGuard is prohibited.
- g. The obtaining of preferences, judgments, attachments, garnishments, or liens against Respondent PrimeGuard is prohibited.
- h. The levying of execution against Respondent PrimeGuard is prohibited.
- i. The making of any sale or deed for nonpayment of taxes or assessments that would lessen the value of the assets of Respondent PrimeGuard is prohibited.
- j. The withholding from the Liquidator or receiver of books, accounts, documents, or other records relating to the business of Respondent PrimeGuard is prohibited.
- k. Any other threatened or contemplated action that might lessen the value of Respondent PrimeGuard's assets or prejudice the rights of policyholders, creditors, or shareholders, or the administration of any proceeding under this article is prohibited.
- l. The transfer and/or assignment of any warranty contract wherein Respondent PrimeGuard is identified as a named insurer is prohibited.

12. Pursuant to Haw. Rev. Stat. § 431:15-108, all policies issued by Respondent PrimeGuard in effect at the time of the issuance of this Order of Liquidation shall continue in force only for the lesser of: (1) a period of thirty days from the date of entry of this liquidation order; (2) the expiration of the policy coverage; (3) the date when the insured has replaced the insurance coverage with equivalent insurance in another insurer or otherwise terminated the policy; or (4) the Liquidator has effected a transfer of the policy obligations pursuant to section 431:15-310(a)(8).

13. All warranty contracts, which Respondent PrimeGuard is identified as the named insurer, are hereby cancelled the earlier of: (1) a period of thirty days from the date of the entry of this liquidation order; (2) the expiration of the warrant contract; or (3) the date when the warranty contract holder has replaced the warranty contract with an equivalent warranty contract or otherwise terminated the warranty contract.

14. The seizure order filed herein on November 14, 2005, as amended, and the order of confidentiality issued related to that seizure order pursuant to Haw. Rev. Stat. § 431:15-203 are hereby lifted with respect to the existing files herein and all further proceedings, and replaced with this Order of Liquidation.

Dated: Honolulu, Hawaii, Dec 19, 2005.

VICTORIA S. MARKS



JUDGE OF THE ABOVE-ENTITLED COURT

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*J.P. Schmidt, in his capacity as Insurance Commissioner of the State of Hawaii, vs. PrimeGuard Insurance Company, Inc., A Risk Retention Group, S.P. No. 05-1-0443 VSM; ORDER OF LIQUIDATION*