

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

IN THE MATTER OF THE LIQUIDATION) No. 96 CH 5093
OF GENEVA ASSURANCE SYNDICATE, INC.)
)
IN THE MATTER OF THE LIQUIDATION) No. 96 CH 10138
OF FIRST OAK BROOK CORP. SYNDICATE) (Consolidated)
)
IN THE MATTER OF THE LIQUIDATION) No. 97 CH 1974
OF RESURE INC.) (Consolidated)
)
IN THE MATTER OF THE LIQUIDATION) No. 99 CH 1639
OF AAI SYNDICATE # 1, LTD.) (Consolidated)
)
IN THE MATTER OF THE LIQUIDATION) No. 99 CH 267
OF ALPINE INSURANCE COMPANY) (Consolidated)
)
IN THE MATTER OF THE LIQUIDATION) No. 00 CH 7217
OF RCA SYNDICATE #1, LTD.) (Consolidated)
)
IN THE MATTER OF THE LIQUIDATION) No. 00 CH 13471
OF AGORA SYNDICATE, INC.) (Consolidated)

NATHANIAL S. SHAPO, Director of)
Insurance of the State of Illinois,)
as Statutory Liquidator of Geneva)
Assurance Syndicate, Inc., and)
First Oak Brook Corp. Syndicate)
)
Counterplaintiff,)
)
v.)
)
) No. 96 CH 5093
) (Consolidated)
) Judge Foreman
THE INEX INSURANCE EXCHANGE, an)
Illinois not-for-profit corporation,)
and THE INEX INSURANCE EXCHANGE)
GUARANTY FUND, an Illinois)
not-for-profit corporation,)
)
)
Counter-defendants.)

**MOTION FOR APPROVAL OF PLAN OF DISTRIBUTION
FOLLOWING NOTICE TO CLAIMANTS AND HEARING**

Intervenors-Counter-defendants, the INEX Insurance Exchange (the "Exchange") and the INEX Insurance Exchange Guaranty Fund ("the Guaranty Fund"), and Intervenor, the INEX Insurance Exchange Immediate Access Security Association ("the Association"), (collectively "the INEX parties"), by their respective attorneys, move for the Court to approve the Plan of Distribution (Exhibit A), following a fairness hearing upon notice to all claimants with approved or pending claims relating to the following underwriting syndicates for which Nathaniel S. Shapo, Director of the Department of Insurance (" the Director"), has been appointed statutory liquidator (collectively, the "syndicates in liquidation"):

- (1) Geneva Assurance Syndicate, Inc.
- (2) First Oak Brook Corp. Syndicate
- (3) Resure, Inc.
- (4) AAI Syndicate #1, Ltd.
- (5) RCA Syndicate #1, Ltd.
- (6) Transco Syndicate #1, Ltd., now known as Alpine Holdings Company
- (7) Agora Syndicate, Inc.

The INEX parties further move that, upon approval of the Plan of Distribution, this Court enter a finding declaring that the terms thereof are binding upon all claimants of said syndicates.

In support of this motion, the INEX parties state as

follows:

1. The Exchange is an Illinois not-for-profit corporation, created pursuant to the Illinois Insurance Exchange Act, Article V 1/2 of the Illinois Insurance Code, 215 ILCS 5/107 *et seq.*, to operate as an exchange for the insurance and reinsurance of risks. Pursuant to the Exchange Act, insurance on the Exchange is provided through syndicates.

2. The Guaranty Fund is an Illinois not-for-profit corporation established by the Exchange for the protection of persons and entities insured or reinsured pursuant to policies issued by member syndicates of the Exchange through the facilities of the Exchange. **To the extent available, and pursuant to various limitations, requirements and provisions, set forth, *inter alia* in the Guaranty Fund's Plan of Operation, the Guaranty Fund makes available funds to persons and entities which have claims on policies of insurance and reinsurance issued through the Exchange by insolvent Exchange underwriting syndicates.**

3. The Association is an Illinois not-for profit corporation, created pursuant to §107.26 of the Illinois Insurance Code, 215 ILCS 5/107.26, with certain responsibilities with respect to claims against insolvent syndicates.

4. In the period between July 11, 1996 and November 15, 2000, Orders of Liquidation with findings of insolvency were entered with respect to or affecting seven syndicates providing insurance and reinsurance on the Exchange, with the Director

appointed as statutory liquidator in accordance with Article XIII of the Illinois Insurance Code, 215 ILCS 5/187 *et seq.* The syndicates in liquidation are:

- (A) Geneva Assurance Syndicate, Inc. ("Geneva"),
order entered July 11, 1996;
- (B) First Oak Brook Corp. Syndicate ("First Oak
Brook") order entered November 12, 1996;
- (C) Resure, Inc. ("Resure"),
order entered February 27, 1997;
- (D) AAI Syndicate #1, Ltd. ("AAI"),
order entered February 9, 1999;
- (E) RCA Syndicate #1, Ltd. ("RCA"),
order entered June 5, 2000;
- (F) Transco Syndicate #1, Ltd., now known as Alpine Holdings
Company ("Transco"), order affecting Transco
creditors entered June 28, 2000 in the liquidation
of its subsidiary Alpine Insurance Company;
- (G) Agora Syndicate, Inc. ("Agora"),
order entered November 15, 2000.

5. Policies of insurance and reinsurance issued through the Exchange by these seven syndicates were afforded certain coverage in the event of insolvency from the Guaranty Fund pursuant to the terms of the Guaranty Fund's Plan of Operation. (Exhibit B).

6. Pursuant to 215 ILCS 5/191 of Article XIII of the Insurance Code, the Director, as liquidator, is vested with title to all of the insolvent syndicates' property, assets, contracts, and rights of action. Similarly, pursuant to §193 of Article XIII of the Insurance Code, 215 ILCS 5/193, the Director, as

liquidator, is authorized to bring actions on behalf of creditors, members, policyholders or shareholders.

7. A dispute arose between the Director and the Exchange and Guaranty Fund concerning the application of the so-called "90-Day Rule," §4.9 of the Guaranty Fund's Plan of Operation. In essence, the Plan of Operation generally provided in §4.4.(b) that up to \$15,000,000 could be paid by the Guaranty Fund with respect to any one insolvency, but pursuant to the 90-Day Rule multiple insolvencies declared within a 90-day period would be combined and treated as one insolvency, subject to the \$15,000,000 per insolvency limitation.

8. The Director has taken the position that the insolvencies of Geneva and First Oak Brook were not determined within 90 days of each other, and that up to \$30,000,000 could be payable from the Guaranty Fund for these two insolvencies. The Exchange and the Guaranty Fund have taken the position that the two insolvencies had been determined within 90 days of each other, and accordingly a maximum of \$15,000,000 could be payable for these two insolvencies. The Director asserted his position in an Amended Counterclaim in this action seeking declaratory judgment and other relief.

9. Initially a determination that the 90-Day Rule was inapplicable in the context of the Geneva and First Oak Brook insolvencies might have increased the amount of available funds

which could be paid by the Guaranty Fund for the then pending insolvencies.

10. However, in the present context of seven insolvencies, it is apparent that the outcome of the 90-Day Rule dispute will have no ultimate effect on the amounts available from the Guaranty Fund for all seven of the pending insolvencies. Specifically, the total amount in the Guaranty Fund available for the seven insolvencies is projected to be insufficient to satisfy all the claims which would be eligible for payment from the Guaranty Fund pursuant to its Plan of Operation.

11. Thus, a resolution of the 90-Day Rule dispute in accord with the position taken by the Director would not increase the total amount of assets from the Guaranty Fund which could be utilized for the satisfaction of approved covered claims and related expenses from all seven insolvencies, but would only have the potential to affect the relative distribution of the limited available assets of the Guaranty Fund among Approved Claimants with covered claims arising from the respective insolvencies.

12. The substantial projected costs of continuation of the litigation over the applicability of the 90-Day-Rule will further deplete the assets of both the insolvent syndicates' estates and the assets of the Guaranty Fund.

13. Continued litigation thus would not benefit claimants, and would reduce the funds which could be available to pay claims

and expenses relating to the seven insolvencies.

14. In this context, the Director and the INEX parties have recognized that it would be preferable to terminate the litigation over the 90-Day-Rule without incurring further expenses on an issue which would deplete assets without any potential to increase the total funds available for all the insolvencies.

15. The agreement between the Director and the Exchange and Guaranty Fund to terminate the litigation over the 90-Day Rule is based upon and contingent on the approval of a Plan of Distribution (Exhibit A) proposed by the INEX parties which addresses the fact that, regardless of how the 90-Day Rule dispute was resolved, it is projected that the Guaranty Fund's Premium Surcharge Account and the applicable individual syndicate Guaranty Fund Custodial Accounts will have insufficient assets to fully pay Approved Claimants of the seven insolvencies pursuant to the Plan of Operation.

16. The Plan of Distribution is premised upon a determination that the most equitable means of addressing the Guaranty Fund's shortfall in assets is to distribute on a *pro rata* basis the assets of the Premium Surcharge Account and syndicate Guaranty Fund Custodial Accounts which are eligible for distribution to any of the seven insolvencies.

17. Such *pro rata* payments would remain subject to the

\$300,000 per claim amount limit of the Plan of Operation and the \$15,000,000 per insolvency limit of the Plan of Operation.

18. For the purposes of the Plan of Distribution, the Geneva and First Oak Brook insolvencies would be treated as separate insolvencies, each subject to a separate \$15,000,000 limit.

19. Thus, under the Plan of Distribution, each Approved Claimant of each of the seven insolvencies would receive the same percentage of the unpaid portion of the first \$300,000 of insurance or reinsurance contract obligations. Approved Claimants are defined in the Plan of Distribution as claimants with "Covered Claims" within the meaning of the §1.2(f) of the Guaranty Fund's Plan of Operation (as determined by the Guaranty Fund in the exercise of its discretion), whose claims were timely submitted to the Liquidator and have been adjudicated and approved by the Court with jurisdiction over such claims.

20. This Plan of Distribution would further benefit Approved Claimants with Covered Claims by providing for earlier payments to most claimants than would normally be the case. Specifically, the Plan of Distribution provides for preliminary payments to Approved Claimants of a syndicate when the Liquidator has made final distributions from the estate for that particular syndicate insolvency. Thus, most Approved Claimants would not have to wait for the Liquidator to have completed payments

relating to all of the insolvent syndicates before receiving any payments from the Guaranty Fund.

21. Moreover, as noted above, the Plan of Distribution would eliminate substantial litigation expenses relating to the dispute over the 90-Day Rule. This will avoid needless depletion of the assets of the insolvent syndicate estates and the Guaranty Fund. Accordingly, this Plan would benefit all Approved Claimants of all seven insolvencies by increasing the total amount of funds available for distribution.

22. The INEX parties propose that notice of the proposed Plan of Distribution be given to all claimants of the syndicate insolvencies whose claims have not been dispositively denied. These claimants will be afforded a chance to be heard on the fairness of the Plan of Distribution prior to the Court's ruling on the motion for approval. This Court has jurisdiction in all seven insolvencies with respect to claims relating to the Guaranty Fund. Proposed notices are attached hereto as Exhibit C.

23. The Director and the INEX parties agree that, upon approval of the Plan of Distribution, the dispute over the interpretation of the 90-Day Rule in the context of the Geneva and First Oak Brook insolvencies be left unresolved, and that the Director will move for a dismissal with prejudice of his Amended Counterclaim against the INEX parties. The settlement with

respect to the litigation on the 90-Day dispute is contingent upon Court approval of the Plan of Distribution.

24. Because the Plan of Distribution may result in some variation in payments to claimants of the various insolvent syndicates from the payments that would result from court rulings in favor of, or contrary to, the position taken by the Director in this case, the Director has adopted a neutral position with respect to the specific provisions of the Plan of Distribution.

25. Notwithstanding this neutral position, the Director agrees with the INEX parties that the interests of all parties and all claimants of the seven insolvent syndicates would be best served by termination of the litigation over the 90-Day Rule, thus avoiding further expenses on an issue which would deplete assets without any potential for increasing the funds available for all seven insolvencies.

WHEREFORE, the INEX parties pray that this Court enter an Order (a) setting a date for a hearing on the fairness of the Plan of Distribution, and (b) ordering notice of said hearing to be sent to all claimants with claims relating to Geneva Assurance Syndicate, Inc., First Oak Brook Corp. Syndicate, Resure, Inc., AAI Syndicate #1, Ltd., Transco Syndicate #1, Ltd., now known as Alpine Holdings Company, RCA Syndicate #1, Ltd., and Agora Syndicate, Inc., whose claims have not been dispositively denied pursuant to the applicable provisions of Article XIII; and that,

after providing for said hearing, that this Court enter a further order (1) approving the Plan of Distribution; (2) ruling that the terms of the Plan of Distribution are binding upon all claimants; (3) ruling that any prior rights that said claimants may have had to payments from the INEX parties pursuant to the Guaranty Fund's Plan of Operation have been bindingly modified by the Plan of Distribution, and (4) granting such other and further relief as the Court deems just and equitable.

The INEX Insurance Exchange, and
the INEX Insurance Exchange
Guaranty Fund, Intervenors-
Counterdefendants, and the INEX
Insurance Exchange Immediate Access
Security Association, Intervenor

By: _____

One of Their Attorneys

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