

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

IN THE MATTER OF THE LIQUIDATION) OF GENEVA ASSURANCE SYNDICATE, INC.,))	No. 96 CH 05093
)	
IN THE MATTER OF THE LIQUIDATION) OF FIRST OAK BROOK CORP. SYNDICATE,))	No. 96 CH 10138 (Consolidated)
)	
IN THE MATTER OF THE LIQUIDATION) OF RESURE, INC.,))	No. 97 CH 01974 (Consolidated)
)	
IN THE MATTER OF THE LIQUIDATION) OF A.A.I. SYNDICATE #1, LTD.,))	No. 99 CH 01639 (Consolidated)
)	
IN THE MATTER OF THE LIQUIDATION) OF ALPINE INSURANCE COMPANY,))	No. 99 CH 00267 (Consolidated)
)	
IN THE MATTER OF THE LIQUIDATION) OF RCA SYNDICATE #1, LTD.,))	No. 00 CH 07217 (Consolidated)
)	
IN THE MATTER OF THE LIQUIDATION) OF AGORA SYNDICATE, INC.,))	No. 00 CH 13471 (Consolidated)

NATHANIEL S. SHAPO, Director of Insurance) of the State of Illinois, as Statutory Liquidator) of Geneva Assurance Syndicate, Inc., and First) Oak Brook Corp. Syndicate,))	
)	
Counter-Plaintiff,))	No. 96 CH 5093
)	(Consolidated)
v.))	
)	
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.))	

OPINION AND MEMORANDUM OF LAW

This matter comes on the Court's call by INEX seeking approval of their proposed Plan of Distribution. The Plan of Distribution is the result of settlement negotiations between INEX and the Liquidator. It is the proposed means of disbursing funds held by INEX for the benefit of

seven insolvent insurance syndicate claimants. The proposed Plan of Distribution replaces the Plan of Operation that INEX currently uses to disburse funds to insolvent insurance syndicate claimants because the current method is insufficient to fairly handle the insolvency of seven insurance syndicates. The insolvency of all seven syndicates created unforeseen problems rendering the Plan of Operation an inequitable solution. Given these circumstances as detailed below, this Court finds the proposed Plan of Distribution to be fair and in the best interest of all claimants.

I. PARTIES

A brief explanation as to the parties of this settlement may be helpful in understanding the Court's rationale in approving this proposed Plan of Distribution. The parties to this settlement agreement are INEX, the Liquidator, and the claimants.

A. INEX

The INEX Parties ("INEX") consist of the INEX Insurance Exchange Guaranty Fund, the INEX Insurance Exchange, and the INEX Insurance Exchange Immediate Access Security Association. INEX is a group of Illinois not-for-profit corporations established pursuant to the Illinois Insurance Code to provide some relief to claimants in the event that an insurance company becomes insolvent or financially impaired. Insurance Exchange, 215 ILCS 5/107 *et seq.* INEX pays funds on unpaid claims, up to the established limits, after the insurance company has liquidated all assets and still is unable to meet its obligations to claimants.

B. The Liquidator

J. Anthony Clark, recently appointed replacing Nathaniel Shapo, is the Director of Insurance of the State of Illinois. He is the Statutory Liquidator ("the Liquidator") of the following: (1) Geneva Assurance Syndicate, Inc. ("Geneva"); (2) First Oak Brook Corp., Syndicate ("First Oak Brook"); (3) Resure, Inc. ("Resure"); (4) AAI Syndicate #1, Ltd. ("AAI"); (5) RCA Syndicate #1, Ltd. ("RCA"); (6) Transco Syndicate #1, Ltd. ("Transco") [now known as Alpine Holdings Company]; and (7) Agora Syndicate, Inc ("Agora"). The Liquidator is appointed by statute to manage each syndicate once an order of insolvency is issued. Rehabilitation, Liquidation, Conservation and Dissolution of Companies, 215 ILCS 5/187 *et seq.* In this matter, the Liquidator was appointed to represent all of the insolvent syndicates individually. Because the Liquidator has a responsibility to act in the best interest of each individual syndicate and the interests of one syndicate may be contrary to the interests of another syndicate, the Liquidator took a neutral stance on whether the Plan of Distribution should be approved to settle all outstanding litigation.

C. Claimants

The claimants are individuals or corporations who have a claim for insurance with an insurance company syndicate found to be insolvent. Claimants are also other insurance companies who have reinsurance claims. It is important to note that all claimants are not necessarily a party to an insurance contract with one of the insolvent syndicates.

II. HISTORY

A. The Seven Insolvent Syndicates

Between July 11, 1996 and November 15, 2000, Orders of Liquidation with findings of insolvency were entered for seven syndicates that had provided insurance and reinsurance. The syndicates became insolvent in the following order:

(1) Geneva Assurance Syndicate, Inc.	July 11, 1996
(2) First Oak Brook Corp., Syndicate	November 12, 1996
(3) Resure, Inc.	February 27, 1997
(4) AAI Syndicate #1, Ltd.	February 9, 1999
(5) RCA Syndicate #1, Ltd.	June 5, 2000
(6) Transco Syndicate #1, Ltd.	June 28, 2000
(7) Agora Syndicate, Inc.	November 15, 2000

The unanticipated insolvencies of the seven syndicates in a relatively short period of time resulted in unexpected shortcomings in available assets held by INEX. The original Plan of Operation was designed to handle insolvencies which would occur over extended periods of time and not contemporaneously. INEX could then receive additional monies and allow assets to replenish themselves before the next insolvency. The proposed Plan of Distribution was created to correct the unexpected occurrences of seven insolvencies within such a short time frame.

B. The "90-Day Rule" Litigation

The first two syndicates to become insolvent were Geneva and First Oak Brook. Under the Plan of Operation, the exact date of the insolvencies became tremendously important. If only one company was insolvent within a 90 day period, INEX could give the claimants of that syndicate up to \$15,000,000.00. However, according to the 90-Day Rule, multiple insolvencies declared within a 90-day period are treated as one insolvency. If this occurs, no matter how many companies were insolvent, those insurance syndicate claimants would share a total of up to \$15,000,000.00. The purpose of the 90-Day Rule is to limit the payout and allow INEX time to replenish its funds before the next insolvency.

The Liquidator took the position that the Geneva and First Oak Brook insolvencies were not declared within 90 days of each other, and therefore up to \$30,000,000.00 from INEX could be paid for these two insolvencies. INEX took the position that the two insolvencies were declared within 90 days of each other, and thus a maximum of \$15,000,000.00 could be paid for these two insolvent syndicate claimants combined. The difference of opinion stems from whether the dates relevant to the 90-Day Rule are the actual dates of the Court Order finding insolvency or the date of the Board of Trustees decision declaring insolvency.

C. Settlement Agreement on the 90 Day Rule Dispute, Contingent on Approval of the Plan of Distribution

The Liquidator and INEX, with the encouragement and approval of Judge Lester D. Foreman, entered into settlement negotiations to terminate the 90-Day Rule litigation and reduce the administrative costs depleting the assets of INEX and the Liquidator. By settling the 90-day rule litigation and saving both administrative costs and legal fees, there will be more funds to distribute to the claimants. The end result of the settlement negotiation took the form of the proposed Plan of Distribution now before this Court. The settlement agreement provides for the dismissal with prejudice of the 90-day rule litigation, contingent upon this Court's approval of the proposed Plan of Distribution, including an order holding that the Plan of Distribution is binding upon all claimants.

Judge Foreman decided to treat the proposed plan in a manner very similar to a proposed settlement in a class action. Judge Foreman approved the notice of hearing form. Individuals and corporations were notified that a formal hearing was to be held on the proposed Plan of Distribution on July 21, 2003. The notice further informed all that they could address the Court. The Court directed that a notice of the hearing be sent to each individual with a possible claim against one of the insolvent insurance companies. In all, 7,838 notices were sent out. Of the responses received by the Court, most claimants supported the Plan of Distribution. Only thirty-seven (37) claimants replied to the notice, and only two (2) objected to the Plan. The vast majority of the claimants who chose not to respond to the notices sent out support the proposed Plan of Distribution by their silence.

On July 21, 2003, this Court held a hearing on the fairness of the proposed Plan of Distribution of funds held by INEX. The hearing provided every claimant an opportunity to address this Court and hear the presentations of INEX and the Liquidator. The hearing provided every claimant with an opportunity to advise this Court of the claimant's position regarding the Plan of Distribution.

D. The Objections to the Proposed Plan of Distribution

Of the 7,838 notices sent to the claimants, the Court received only two (2) valid objections. Eight (8) other objections were received. Some objectors claimed they were not given sufficient information by INEX and the Liquidator. Some objectors were complaining because they disagreed with the amount approved by the Liquidator on their individual approved claim. The Court's decision in approving this Plan of Distribution is not based on each individual claim amount. The Court examined the fairness of the Plan to all claimants as a whole. In order to address the claimants' concerns over a lack of information, this Court held not one, but two hearings on this matter. After the first hearing, this Court ordered INEX and the Liquidator to provide this Court with further information and to make extra copies of the requested information available at the courtroom. This Court also provided time for any claimant to file an additional objection after analyzing the data provided by INEX and the Liquidator. INEX and the Liquidator were then allowed to respond to any objections.

After receiving all of the new information from INEX and the Liquidator and reviewing all submissions to the Court, the Court scheduled another hearing to clarify the record. At the second hearing the Court asked for further information of both INEX and the Liquidator. Again a schedule was created for INEX and the Liquidator to provide this Court with the requested

information and also provide this information to all interested parties. The Court further analyzed all additional submissions before ruling on the fairness of the Plan of Distribution.

III. SUMMARY OF LAW

No party to the hearing provided this Court with any precedent or standard of review to follow. This Court will limit its determination to the question of whether or not the Plan of Distribution should be approved. This Court's function is not to suggest an alternative plan.

This Court's research found only one case on point. The standard applied by the Illinois Supreme Court in evaluating an insurance liquidation settlement agreement is that the settlement must be fair, reasonable, and in the best interests of all those who will be effected by it. Wilcox v. Equity Funding Life Insurance Co., 611 Ill. 2d 303, 316 (1975). The trial court's decision is discretionary. Id. In determining whether to approve a settlement proposal, the court should not judge the legal and factual questions by the same criteria applied in a trial on the merits, rather approval should be given if the proposal is fair, reasonable and adequate. Id. Furthermore, that some alteration of the agreement may be more beneficial to certain interests is not the test, the court must review the settlement as a whole, considering all relevant factors in evaluating the settlement proposal. Id. at 319.

IV. THE PROPOSED PLAN OF DISTRIBUTION

The proposed Plan of Distribution was developed and proposed by INEX, after consultation with the Liquidator. The proposed Plan seeks a way of distributing certain assets of INEX to claimants of the insolvent syndicates who have approved claims. Approved claims are those insurance and reinsurance claims that have been timely submitted to the Liquidator, and have or will be approved and adjudicated for INEX by the court with jurisdiction pertaining to the insolvency.

The proposed Plan of Distribution provides for a *pro rata* distribution among all approved claims arising from these seven insolvencies. Disbursement will be calculated so that each approved claimant of each of the seven insolvent syndicates will receive the same percentage of their unpaid, approved covered claim from INEX. Many of the seven insolvent syndicates have their disputes assigned among different Judges in the Chancery Division. Individual claimants have their disputes in various Courts across the United States. The determination of the approved amount of the claim is made for INEX by the Court with jurisdiction for the insolvency. Payments to claimants will be subject to \$300,000 limit per claim, as in the original Plan of Operation. Each claim payment is also restricted by a maximum payment of \$15,000,000.00 to each syndicate. If the fifteen million dollars limit per syndicate is reached, each claim for that syndicate will be reduced to share the limited amount *pro rata*.

V. ANALYSIS

The standard applied by the Illinois Supreme Court in evaluating an insurance liquidation settlement agreement is that the settlement must be fair, reasonable, and in the best interests of

all those who will be effected by it. Wilcox v. Equity Funding Life Insurance Co., 611 Ill. 2d 303, 316 (1975). The Court has considered all objections and finds the Plan of Distribution to be the fairest means of dividing the available assets of INEX among the seven syndicate's claimants.

A. The Plan of Distribution Treats All Claimants Fairly.

The Plan of Distribution treats all claimants on an equal basis. Each approved claimant receives the same percentage of their unpaid claim as any other claimant.

The main objection to the Plan of Distribution came from GEO Synthetics, who has a claim in the closed Resure syndicate. Resure was the third syndicate to become insolvent. GEO Synthetics claims that the settlement agreement is not fair because it does not represent a compromise in the 90-day litigation. GEO Synthetics argues that a compromise would have entailed limiting the maximum amount recoverable to the claimants of any syndicate to some figure between \$7,500,000.00 and \$15,000,000.00, which represents the different amounts available to the first two syndicates being declared insolvent dependent on the outcome of the 90-day dispute. GEO Synthetics also argues that a better Plan of Distribution would be to allocate the funds held by INEX equally to each syndicate first, then the excess being available assets of INEX could be redistributed among the remaining syndicates who need more funds.

This Court has carefully considered GEO Synthetics' proposition. Geo Synthetics' first argument that the limit should be lowered from \$15,000,000.00 per syndicate requires this Court to favor certain claimants. An exhaustive analysis of the data provided indicates that under the best case scenario, where all disputed claims are found in favor of the Liquidator and all possible sources of money are easily collected, all claimants will be paid in full up to the limit of the INEX Plan of Operation originally set at \$15,000,000.00. Lowering the limit under the best case scenario will only hurt the claimants in one or two syndicates because other syndicates would not need significant funds and the syndicates that require funds up to the limit would be deprived. Under the worst case scenario, where all disputed claims are found in favor of the claimants and the Liquidator is unable to collect on any additional sources of funding, a lower limit will again favor claimants from certain syndicates over claimants from other syndicates. Syndicates with a great need of additional assets from INEX would not receive those assets due to a lower limit available to each syndicate while those who only need relatively minor assistance from INEX would not be affected by the lower syndicate limit. A lower syndicate limit favors certain syndicates over others and not all claimants are treated fairly.

GEO Synthetics' next argues that INEX should distribute funds equally to each syndicate. Each syndicate could then distribute funds on unpaid approved claims. If there were funds left over after paying all claims of that syndicate, the funds would be returned to INEX for further distribution to other syndicates that need funding beyond their equal share until all of the funds were distributed. Geo Synthetics' plan to distribute INEX funds to each syndicate first is likewise unfair. It is clear that half of the syndicates would be paid in full from INEX and the other syndicates would be seriously lacking funds for unpaid claims. This distribution plan suggested by GEO Synthetics is not in accord with this Court's standard considering the fairness to all claimants equally.

B. The Plan of Distribution is Reasonable When Compared With the Plan of Operation.

The Plan of Distribution is reasonable because every claimant's perspective is served. The only other valid objection received and considered by this Court was to leave the Plan of Operation in place. This objection came from a claimant in the First Oak Brook syndicate. First Oak Brook Syndicate was the second syndicate to become insolvent. The claimant argued that they should then receive their full \$15,000,000.00 limit assuming that INEX has over \$30,000,000.00 in assets because First Oak Brook was the second syndicate to become insolvent.

The Plan of Distribution is reasonable because it settles the 90-Day Rule dispute. The claimants from the first two syndicates that became insolvent avoid the risk of litigating the 90-Day Rule dispute and are eligible for the full \$15,000,000.00 per individual syndicate. The other syndicates also are eligible for funds. Under the Plan of Operation, the first syndicate to become insolvent gets the first claim to INEX funds. After the first two syndicates get their share, there may not be any funds left to be distributed. The Plan of Distribution is reasonable because every claimant from every syndicate shares in the same funds, and the claimants do not have to wait in line until other claimants take their money first.

Another consideration underlying the Court's reasoning is the cost of litigation. This case has been pending in the Circuit Court for eight years. It is time to move forward and allow all claimants to receive any and all relief that both the Liquidator and INEX can provide. This proposed Plan of Distribution conceived by Judge Foreman gave a full and fair opportunity to all claimants of all seven syndicates to voice their grievance. Of the 7,838 notices sent out, only two objections remain. By their silence, the overwhelming majority are in agreement with the Plan of Distribution. It's unclear as to the cost incurred so far, but the cost of litigating hurts every claimant by depleting available funds and causing delay in payment. This Plan of Distribution is in the best interest of every claimant because it provides for an end to litigation and allows for more money to be distributed.

VI. CONCLUSION

Based on the foregoing, this Court finds the proposed Plan of Distribution is fair, reasonable, and in the best interest of all claimants and therefore approves the Plan of Distribution.

November 26, 2003

ENTERED

Entered: NOV 26 2003

JUDGE DEBORAH MARY DOOLING-1591

Deborah Mary Dooling
Circuit Court Judge