

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

IN RE: First Sealord Surety, Inc., :
In Liquidation : No. 1 FSS 2012

APPLICATION TO APPROVE AGREEMENT
REGARDING THE DISPOSITION OF A SPECIAL DEPOSIT

Applicant, Teresa D. Miller, Insurance Commissioner of the Commonwealth of Pennsylvania, in her official capacity as Liquidator ("Liquidator") of First Sealord Surety, Inc. ("FSSI"), respectfully asks this Court, pursuant to the Insurance Department Act of 1921 ("Act"), 40 P.S. §§ 221.1 - 221.63, and Pa.R.A.P. 3776, to enter an Order in the form attached granting this Application and approving the terms of the Agreement attached to the Application as Exhibit A.

In support of this Application, the Liquidator avers the following:

1. FSSI was placed in liquidation by Order of this Court dated February 8, 2012.
2. Prior to being placed in liquidation, FSSI deposited monies with various state insurance departments as a condition precedent to being permitted to conduct business in those states. Those deposits are commonly referred to as "special deposits".
3. The Liquidator is currently in the process of arranging for the final disposition of FSSI's special deposits.

4. One of those special deposits is currently in the custody and control of the South Carolina Department of Insurance (“SCDI”).

5. In order to distribute special deposit monies, state insurance departments typically must either seek judicial approval within their state to establish an ancillary receivership, or enter an agreement with the domiciliary liquidator regarding the disposition of the special deposit.

6. The Liquidator has reached an agreement with the SCDI that will allow the South Carolina special deposit to be used to pay the claims of South Carolina claimants, in accordance with 40 P.S. § 221.61(b), and any related administrative costs incurred by the SCDI.

7. The Liquidator’s agreement with the SCDI is memorialized in the South Carolina Deposit Release Agreement (“Deposit Release Agreement”), which is attached to this Application as Exhibit A.

8. The Act confers broad power upon the Liquidator to administer the affairs of an insolvent insurer’s estate and to achieve the purposes of the Act. See 40 P.S. §§ 221.1 and 221.23.

9. Section 221.23 further grants the Liquidator the authority to take such acts “as may be necessary or expedient for the accomplishment of or in aid of the purpose of liquidation.” 40 P.S. § 221.23(23).

10. The Liquidator believes that entering the Deposit Release Agreement is in the best interests of the FSSI estate, its claimants, and the public, because it will avoid the time and expense associated with establishing and terminating an ancillary receivership in South Carolina, and thus preserve more of FSSI’s general assets for distribution to FSSI’s claimants by allowing for an expeditious disposition of the South Carolina special deposit.

WHEREFORE, the Liquidator respectfully requests that this Court grant her Application and enter an Order in the form attached approving the terms of the Deposit Release Agreement as set forth in Exhibit A, and authorizing the Liquidator to take such actions as are necessary to consummate the Deposit Release Agreement as approved.

Respectfully submitted:

By: 

PRESTON M. BUCKMAN (I.D. #57570)
Insurance Department Counsel
Governor's Office of General Counsel
Pennsylvania Insurance Department
Capitol Associates Building
901 North 7th Street
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Attorney for Teresa D. Miller, Insurance
Commissioner of the Commonwealth of
Pennsylvania, in her official capacity as Statutory
Liquidator of FSSI

Dated: 

EXHIBIT A

SOUTH CAROLINA DEPOSIT RELEASE AGREEMENT

This Agreement is made by and between the Director of the South Carolina Department of Insurance ("Director") and Teresa D. Miller, solely in her capacity as Liquidator of First Sealord Surety, Inc., in Liquidation ("Insurer").

RECITALS

WHEREAS, Insurer is subject to delinquency proceedings in its state of domicile, styled *In Re: First Sealord Surety, Inc., in Liquidation*, No. 1 FSS 2012, Commonwealth Court of Pennsylvania, and initiated on February 8, 2012 (the "Receivership Proceeding"); and

WHEREAS, the Insurance Commissioner of for the Commonwealth of Pennsylvania has been appointed as Statutory Liquidator ("Liquidator") and is authorized to administer, manage and control Insurer and its receivership estate, and among other things to enter into this Agreement and to carry out all of its terms and conditions; and

WHEREAS, Insurer made a special deposit in trust for the benefit of South Carolina policyholders and creditors, pursuant to SC Code Ann § 38-9-80 & -90 (2015) and other applicable South Carolina law. The deposit has a market value of approximately \$249,125 as of the date of this agreement ("Deposit Proceeds"); and

WHEREAS, said Deposit Proceeds is held in the custody of the Director; and

WHEREAS, the Director has received information demonstrating to the Director's satisfaction that the Liquidator has disclosed and provided necessary information to identify all South Carolina claims on policies, that the Deposit Proceeds will be exhausted by these claims and that an ancillary receivership is unnecessary;

WHEREAS, pursuant to 40 P.S. § 221.61(b), persons with claims against special deposits have priority against the special deposit, but are subordinate to holders of policy claims and general creditors as to the general assets of Insurer; and

WHEREAS, the Liquidator currently estimates that Insurer's assets upon liquidation shall be sufficient to permit distributions for eligible policyholder claims of a maximum of twenty percent (20%) of the amount allotted for each claim; and

WHEREAS, the Deposit Proceeds are sufficient to permit distributions on allowed South Carolina claims on policies of greater than sixty percent (60%) of the amount allotted for each South Carolina claim; and

WHEREAS, South Carolina claimants would therefore receive a higher percentage distribution from the special deposit than from general assets, and would have no claim against the general assets; and

WHEREAS, South Carolina claimants would benefit from liquidation and distribution by the Director of the Deposit Proceeds to those claimants; and

WHEREAS, in reliance on the Liquidator's information the Director has entered into this Agreement for the purpose of liquidating the Deposit Proceeds, and paying claims together with the Director's administrative expenses, including but not limited to attorneys fees, expenses and costs, as well as wire transfer and other financial institution fees and express courier charges; and

WHEREAS, the parties desire to avoid the expense of establishing an unnecessary ancillary receivership in the state of South Carolina;

AGREEMENT

NOW, THEREFORE, in reliance upon the foregoing and in consideration of the mutual terms, conditions, covenants and obligations of this Agreement, the parties agree as follows:

1) The Director shall liquidate Insurer's deposit and any accrued unpaid interest and dividends, and apply the Deposit Proceeds to payment or partial payment of:

- (a) any penalties for early liquidation/withdrawal;
- (b) any and all South Carolina claims, including but not limited to claims of the Association including any reserves;
- (c) administrative fees and expenses, including but not limited to attorney's fees, expenses and costs, as well as wire transfer and express courier charges; and
- (d) other reasonable fees and expenses incurred to negotiate and carry out this Agreement, whether like or unlike the foregoing.

2) The Director shall notify the Liquidator in writing within thirty (30) days after the full disbursement of the Deposit Proceeds, specifying the names of the claimants receiving distributions and the amount received by each, as well as a brief description, together with the amount, of any and all other distributions;

3) The Liquidator shall reasonably cooperate with the Director to the extent reasonably necessary to effect distributions to South Carolina claimants, including providing upon reasonable request by the Director or an agent thereof relevant additional claims-related information and records.

4) The Liquidator shall file an application to approve this Agreement in the Receivership Proceeding. This Agreement shall not be binding or effective until it is approved by court order entered in the Receivership Proceeding.

5) The Recitals are contractual, and not mere recitals.

6) This written Agreement sets forth the entire agreement of the parties. All prior or contemporaneous agreements, written or oral, are merged herein. All agreements not set forth in this written Agreement are void, and of no force and effect.

7) This Agreement may only be amended by a writing executed by all parties.

8) This Agreement may be executed in counterparts, each of which shall be considered an original if all signatures are original signatures, and all of which shall constitute one document.

9) This Agreement is binding on the official successors-in-interest of the parties.

10) This Agreement may not be assigned.

LIQUIDATOR OF FIRST SEALORD SURETY, INC., IN LIQUIDATION

By: _____ Date: _____, 2015

DIRECTOR OF THE SOUTH CAROLINA DEPARTMENT OF INSURANCE

By: _____ Date: _____, 2015

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving the foregoing document upon all parties of record in this proceeding in accordance with the requirements of 1 Pa. Code Chapter 33 in the following manner:

Service by first-class mail, addressed as follows:

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Attorney for Teresa D. Miller, Insurance
Commissioner of the Commonwealth of
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Liquidator of FSSI

Dated: 7/20/15

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

IN RE: First Sealord Surety, Inc.,
In Liquidation

:
:

No. 1 FSS 2012

ORDER

AND NOW, this ____ day of _____, 2015, upon consideration of the Liquidator's Application to Approve Agreement Regarding the Disposition of a Special Deposit, and any responses thereto, it is hereby ordered that the Application is GRANTED. Further, the terms of the South Carolina Deposit Release Agreement, as attached to the Application as Exhibit A, are approved, and the Liquidator is authorized to take such actions as are necessary to consummate the South Carolina Deposit Release Agreement as approved.

BONNIE BRIGANCE LEADBETTER
JUDGE



COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE OF GENERAL COUNSEL

July 20, 2015

Michael F. Krimmel, Chief Clerk
Commonwealth Court of Pennsylvania
601 Commonwealth Avenue, Suite 2100
P.O. Box 69185
Harrisburg, PA 17120-9185

***Re: In Re: First Sealord Surety, Inc. (In Liquidation)
No. 1 FSS 2012***

Dear Mr. Krimmel:

Attached please find the Liquidator's Application to Approve Agreement Regarding the Disposition of a Special Deposit with regard to the above-referenced matter.

Thank you for your assistance in this matter.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Preston M. Buckman".

Preston M. Buckman
Insurance Department Counsel

PMB:drh

Enclosures