

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In Re: Healthcare Providers Insurance :  
Exchange, In Liquidation : No. 1 HPI 2017

*In re: Liquidator's First Proposal to Distribute Assets to State Guaranty Associations Pursuant to 40 P.S. § 221.36*

**MEMORANDUM and ORDER**

Presently before the Court is the Liquidator's First Proposal to Distribute Assets to State Guaranty Associations Pursuant to 40 P.S. § 221.36<sup>1</sup> (First Proposal) in the liquidation of Healthcare Providers Insurance Exchange (In Liquidation) (HPIX).<sup>2</sup> Specifically, the Liquidator proposes to make an early access distribution of estate funds to four state guaranty associations in partial payment of their claims for administrative expenses and policyholder claims. Pursuant to Section 536(d) of the Act, 40 P.S. § 221.36(d), notice of the First Proposal was given on January 11, 2024, to the guaranty associations and the insurance departments of the states in which HPIX was licensed. No responses were filed to the First Proposal.

Pursuant to Section 536(a) of the Act, the Liquidator is required to apply to this Court for approval of a proposal to disburse an insolvent insurer's available assets to any guaranty association entitled thereto. 40 P.S. § 221.36(a).<sup>3</sup> The purpose

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<sup>1</sup> Section 536 of Article V of the Insurance Department Act of 1921 (Act), Act of May 17, 1921, P.L. 789, added by the Act of December 14, 1977, P.L. 280.

<sup>2</sup> In a January 12, 2018 Order, the Court placed HPIX into liquidation.

<sup>3</sup> Section 536(a) of the Act requires the Liquidator to file such proposal within 120 days of a final determination that the insurer is insolvent or in such condition that its further transaction of business will be hazardous to, *inter alia*, its policyholders. 40 P.S. § 221.36(a). In a report filed

of the proposal is to provide the guaranty associations with early access to available estate funds in payment of their administrative expenses and policyholder claims. See Section 544 of the Act, 40 P.S. § 221.44 (order of distribution of claims from insurer's estate).<sup>4</sup> Section 536(b) of the Act requires the proposal to include, *inter alia*, provisions for reserving amounts for the payment of expenses of liquidation; disbursement of assets marshalled to date and subsequent disbursement as assets become available; and equitable allocation of disbursements to each of the guaranty associations entitled thereto. 40 P.S. § 221.36(b).

According to the Liquidator, the liquid assets available in the HPIX estate as of December 31, 2023, total approximately \$20,900,000, which includes \$16,000,000 available for early access distribution to the guaranty associations.<sup>5</sup> (First Proposal ¶¶ 5-6.) Exhibit A to the First Proposal lists the guaranty associations eligible to receive a distribution, including the corresponding amounts in the annual claims report for 2023 that were approved by this Court's Memorandum and Order filed February 23, 2024 (2023 Claims Report Approval Order). The Liquidator proposes a total distribution of \$16,000,000 to the guaranty associations identified in Exhibit A. (First Proposal ¶ 8.) Each association's distribution is comprised of two parts and is calculated as follows. The first part is the amount of each association's undisputed claim for administrative expenses, which are the class (a)

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May 3, 2018, the Liquidator informed all interested parties, including the guaranty associations, that further information was needed to propose a fully informed early access distribution and, accordingly, the First Proposal would be filed sometime after the claims filing deadline established by this Court.

<sup>4</sup> More specifically, Section 544(a) of the Act assigns expenses of a guaranty association to class (a), which is the highest priority. 40 P.S. § 221.44(a). Claims under policies for losses are assigned to class (b). 40 P.S. § 221.44(b).

<sup>5</sup> The Liquidator has reserved \$2,400,000 to pay his future administrative expenses and \$2,500,000 to pay the pro-rata share of policyholder claims not paid to date or not covered by guaranty associations. (First Proposal ¶ 6.)

claims in the annual claims report for HPIX that were approved in the 2023 Claims Report Approval Order. (*Id.*) The second part relates to the distributions for class (b) policyholder claims. These amounts are determined by dividing each association's total undisputed policyholder claims amount, as reflected in the annual claims report for HPIX that was approved in the 2023 Claims Report Approval Order, by the total amount of undisputed policyholder claims for all guaranty associations. (*Id.*)

Pursuant to Section 536(b)(4) of the Act, 40 P.S. § 221.36(b)(4), the Liquidator has attached as Exhibit B to the First Proposal a form Refunding Agreement that participating guaranty associations must execute prior to receiving a distribution of assets from the HPIX estate. By executing the Refunding Agreement, the guaranty association agrees to “reimburse the Liquidator with the following amounts: (a) any funds, including any investment income the association earned on the assets reimbursed, in excess of its share of the assets of [HPIX] described [] in paragraph 8 [of the First Proposal]; [and] (b) any funds the association received as described [] in paragraph 8 [of the First Proposal] needed to fund any shortfall in the amounts reasonably required by the Liquidator to pay his administrative expenses for HPIX.” (First Proposal ¶ 9.)

Considering the foregoing averments and the absence of any response to the First Proposal, which complies with Section 536 of the Act, 40 P.S. § 221.36, the Court will approve the First Proposal as directed in the following order.

NOW, April 17, 2024, the Liquidator's First Proposal to Distribute Assets to State Guaranty Associations Pursuant to 40 P.S. § 221.36 (First Proposal) is APPROVED as follows:

1. The Statutory Liquidator is authorized to make an early access distribution of \$16,000,000, as set forth in paragraphs 5, 6 and 8 of the First Proposal, to the state guaranty associations listed in Exhibit A to the First Proposal, in partial payment of their claims for administrative expenses and policyholder claims incurred in the liquidation of Healthcare Providers Insurance Exchange (In Liquidation).

2. The form of the Refunding Agreement attached as Exhibit B to the First Proposal is approved.

3. The Statutory Liquidator shall make no other advance payments without further written approval from this Court.

*/s/ Renée Cohn Jubelirer*

Renée Cohn Jubelirer, President Judge