

JUN 02 2011

DEPT OF INSURANCE
BY MS

STATE OF ARIZONA
DEPARTMENT OF INSURANCE

GORDON I. ITO, INSURANCE
COMMISSIONER OF THE STATE OF
HAWAII, AS LIQUIDATOR OF
PRIMEGUARD INSURANCE COMPANY,
FIRST ASSURED WARRANTY
CORPORATION,
1SOURCEAUTOWARRANTY.COM, Inc.,
and WARRANTEE WISE, INC.

Petitioner.

No. 11A-049-INS

ORDER TO RELEASE DEPOSIT

In light of the Agreement for Release and Administration of Statutory Deposit as amended, the Arizona Director of Insurance ("Director") issues this Order releasing and returning the deposited funds to the Petitioner. Arizona Revised Statutes ("A.R.S.") § 20-588(A)(3).

FINDINGS OF FACT

1. First Assured Warranty Corporation ("First Assured") held a service company permit ("permit") which authorized First Assured to sell service contracts in Arizona. The Arizona Department of Insurance ("Department") issued the permit on December 31, 2003. The December 31, 2004 renewal permit expired on December 31, 2005 and First Assured did not renew the permit.

2. In order to assure the faithful performance of its obligations to contract holders under A.R.S. § 20-1095.04, First Assured posted with the Department a statutory deposit of \$112,571.42 ("First Assured Deposit").

3. The First Assured Deposit is being held by the Arizona State Treasurer through the Arizona Department of Insurance.

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1 4. On June 16, 2010, the Petitioner executed an Agreement for Release and
2 Administration of Statutory Deposit in Arizona. (Attachment 1.)

3 5. On January 19, 2011, the Petitioner executed an Amendment to Agreement
4 to the Release of Statutory Deposit in Arizona. (Attachment 2.)

5 6. On May 9, 2011, the Circuit Court of the First Circuit, State of Hawaii, S.P.
6 No. 05-1-0443 (RAN) entered an order approving the Agreement for Release and
7 Administration of Statutory Deposit. (Attachment 3.)

8 **CONCLUSIONS OF LAW**

9 1. The Director has jurisdiction over this matter.

10 2. Any deposit made in this state under Title 20 shall be released and returned
11 upon the proper order of a court of competent jurisdiction to the liquidator, within the
12 meaning of A.R.S. § 20-588(A)(3).

13 3. The Director has no personal liability for the release of such deposit so made
14 by her in good faith. A.R.S. § 20-588(B).

15 **ORDER**

16 THEREFORE, IT IS ORDERED:

17 1. The Department shall release the First Assured statutory deposit in the
18 amount of approximately \$112,571.42 to Petitioner to be distributed in accordance with the
19 Agreement for Release and Administration of Statutory Deposit in Arizona, as amended.

20 DATED this 1st day of June, 2011.

21
22 
23 CHRISTINA URIAS, Director
Arizona Department of Insurance

24 COPY of the foregoing mailed this
25 2nd day of June, 2011 to:

26 Gordon I. Ito, Liquidator
PrimeGuard Insurance Co. – In Liquidation

1 First Assured Warranty Corporation – In Liquidation
c/o State of Hawaii
2 DCCA – Insurance Division
P.O. Box 3614
3 Honolulu, Hawaii 96811
4 Gerrie Marks, Deputy Director
Mary Kosinski, Executive Assistant for Regulatory Affairs
5 Leslie Hess, Financial Affairs Division
Dean Ehler, Assistant Director
6 Arizona Department of Insurance
2910 North 44th Street, Suite 210
7 Phoenix, Arizona 85018

8 
9 Maidene Scheiner

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Attachment 1

Agreement for the Release of Statutory Deposit in Arizona
Involving
PrimeGuard Insurance Company,
First Assured Warranty Corporation,
1SourceAutoWarranty.com, Inc., and
Warrantee Wise, Inc.

This Agreement for the Release of Statutory Deposit in Arizona ("Agreement") is executed on the dates indicated below on the signature page. This Agreement is between and among the following Parties:

Liquidator:

J.P. Schmidt, Insurance Commissioner of the State of Hawaii in his capacity as "Liquidator" of PrimeGuard Insurance Company, First Assured Warranty Corporation, 1SourceAutoWarranty.com, Inc., and Warrantee Wise, Inc.; and

Director:

Christina Urias, Director of Insurance for the State of Arizona.

ARTICLE 1 RECITALS

1.1. Pursuant to an Order of Liquidation dated December 19, 2005 and a Supplemental Order of Liquidation dated July 17, 2008, J.P. Schmidt, Insurance Commissioner of the State of Hawaii, was appointed as Liquidator of PrimeGuard Insurance Company, First Assured Warranty Corporation, 1SourceAutoWarranty.com, Inc., and Warrantee Wise, Inc.

1.2. As of the Contract Date, a Deposit was in existence in the amount of approximately \$112,574.42 held by the Director pursuant to Arizona Revised Statutes ("A.R.S.") § 20-1095 as a statutory deposit ("Deposit") specifically to assure faithful performance of First Assured Warranty's obligations to Arizona Contract Holders.

1.3. On May 5, 2010, the Liquidation Court entered its Order Approving Liquidator's Motion for Approval of Recommendations Regarding Filed Claims, including a determination of the claim amounts for the Arizona Contract Holders.

1.4. The purposes of this Agreement are (i) to confirm the Agreement as between the Liquidator and the Director with respect to the release and payment of the Deposit; and (ii) to authorize release of the Deposit to the Liquidator in order to permit the Liquidator to pay the Deposit to the Arizona Contract Holders in accordance herewith.

AGREEMENTS

NOW THEREFORE, in consideration of the mutual covenants set forth in this Agreement, the Parties agree as follows:

ARTICLE 2 DEFINITIONS

Capitalized terms when used in this Agreement and the Recitals shall have the meanings set forth below. As used throughout this Agreement, references to defined terms that are singular include the plural and that are plural include the singular, as appropriate.

- 2.1. "Administrative Order" means an administrative order to be entered by the Arizona Department of Insurance in the form of Exhibit 4.1.
- 2.2. "Agreement" means this Agreement for the Release of Statutory Deposit in Arizona.
- 2.3. "Arizona Contract Holders" mean the Arizona residents with claims against First Assured Warranty Corporation and/or PrimeGuard Insurance Company. The Arizona Contract Holders are identified in Exhibit 3.1.
- 2.4. "Contract Date" means the date on which this Agreement has been signed by all parties.
- 2.5. "Deposit" means the statutory deposit in the approximate amount of \$112,571.42 being held by the Director for the benefit of the Arizona Contract Holders.
- 2.6. "Deposit Claims" means the total amount of all claims of the Arizona Contract Holders against First Assured Warranty Corporation and/or PrimeGuard Insurance Company. The Deposit Claims are identified in Exhibit 3.1.
- 2.7. "Director" means Christina Urias, Director of Insurance for the State of Arizona.
- 2.8. "Effective Date" means the date on which this Agreement becomes effective. The "Effective Date" will be the first business day after both (i) the Administrative Order has been entered and (ii) this Agreement has been approved by the Liquidation Court and any appeal period has expired without an appeal being filed.
- 2.9. "Estate" means the liquidation estate of PrimeGuard Insurance Company, First Assured Warranty Corporation, 1SourceAutoWarranty.com, Inc., and Warrantee Wise, Inc., under the jurisdiction of the Liquidation Court.
- 2.10. "Liquidator" means J.P. Schmidt, Insurance Commissioner of the State of Hawaii in his capacity as Liquidator of PrimeGuard Insurance Company, First Assured Warranty Corporation, 1SourceAutoWarranty.com, Inc., and Warrantee Wise, Inc., including his successors in office, if any.
- 2.11. "Liquidation Court" means the Circuit Court of the First Circuit, State of Hawaii, S.P. No. 05-1-0443 (RAN) with jurisdiction over the Estate and the insolvency proceedings of PrimeGuard Insurance Company, First Assured Warranty Corporation, 1SourceAutoWarranty.com, Inc., and Warrantee Wise, Inc.

ARTICLE 3 RELEASE OF DEPOSIT AND PAYMENT OF CLAIMS

3.1. Deposit Claims. The Deposit Claims are set forth, identified and calculated in Exhibit 3.1, which claims were submitted to the Liquidation Court and approved by the Liquidation Court in its May 5, 2010 order.

3.2. Deposit. The amount of the Deposit is approximately \$112,571.42 as of the Contract Date. As of the Contract Date, no payments or disbursements have been made from the Deposit.

3.3. Transfer of Deposit to Liquidator. Upon issuance of the administrative order under Section 4.1, the Director will cause the Deposit to be transferred to the Liquidator in order for the Liquidator to disburse the funds from the Deposit pursuant to this Agreement. The Liquidator shall deliver wire or other transfer instructions to the Director. To the extent any additional documentation is necessary in order to transfer the Deposit to the Liquidator, the Director and the Liquidator agree to execute such documents so long as such documents are reasonable and appropriate under the circumstances.

3.4. Liquidator Use of Deposit To Pay Deposit Claims. The Liquidator will cause the Deposit, plus any interest earned thereon, to be paid to the Arizona Contract Holders on a pro rata basis in accordance with Exhibit 3.1 as soon as reasonably practicable after receipt of the funds from the Director and, if possible, by combining the payment with a payment of general assets to avoid multiple mailings. In any event, the Liquidator will cause payments from the Deposit to be mailed to the holders of the Deposit Claims on or before December 1, 2010.

3.5. Arizona Contract Holders Entitled to Share in General Assets. After the Deposit has been paid pro rata to satisfy partially the Deposit Claims, the Arizona Contract Holders shall still be entitled to share pro rata in the distribution of general assets of the Estate, so long as their pro rata recovery from the Deposit and the general assets does not exceed the pro rata recovery of other creditors in the same priority class of the Estate.

3.6. Deposit Not a General Asset of the Estate. The Deposit is not a general asset of the Estate even after transfer of such Deposit from the Director to the Liquidator. The Liquidator agrees to maintain such funds in a separate bank account that is not commingled with general assets of the estate. The Liquidator agrees to hold such funds specifically for the benefit of the Arizona Contract Holders in accordance with the terms and provisions of this Agreement. Notwithstanding the foregoing, reasonable administrative costs of mailing the Deposit payments to the Arizona Contract Holders may, in the Liquidator's discretion, be paid from the Deposit.

3.7. Report to the Director. At or about the time the Deposit is paid to the Arizona Contract Holders, the Liquidator will report to the Director the: balance of the Deposit amount, including any interest earned thereon and any administrative expenses paid there from; and the payment amount made to the Arizona Contract Holders.

ARTICLE 4 MISCELLANEOUS PROVISIONS

4.1. Administrative Order. As soon as reasonably possible after the Liquidation Court approves this Agreement, the Director will issue the administrative order in the form of Exhibit 4.1 pursuant to A.R.S. § 20-588(A)(3).

4.2. Notice. Any notice required or permitted to be given hereunder shall be deemed to be given if delivered by hand or if mailed by first class or certified mail, postage prepaid, or by postal or a commercial express delivery service which issues an individual delivery receipt to the address information below. While emails may be sent as copies in addition to the specific methods identified as satisfying notice requirements, emails, alone, are not sufficient.

4.2.1. Address information for the Liquidator:

First Assured Warranty Corporation – In Liquidation
c/o State of Hawaii
DCCA Insurance Division
P.O. Box 3614
Honolulu, Hawaii 96811
Attn: Paul Yuen
Phone: (808) 586-2790
Fax: (808) 586-2806

4.2.2. Address information for the Director

Dean Ehler
Assistant Director
Arizona Department of Insurance
2910 N. 44th Street, 2nd Floor
Phoenix, Arizona 85018
Phone: (602) 364-3453
Fax: (602) 364-3989

4.2.3. Changes. Each Party shall be responsible for notifying, in writing, the other Parties promptly of any change in addressee or address.

4.3. Liquidation Court Approval. This Agreement is subject to the approval of the Liquidation Court and will not become effective until after the Liquidation Court has approved this Agreement and the appeal period for such order has expired without appeal. The Parties agree to take reasonable steps and work cooperatively to request and secure Liquidation Court approval as soon as reasonable practicable after the Contract Date. Among other things the Liquidation Court approval must include language confirming that the Deposit is not a general asset of the Estate and that the Deposit and its proceeds may only be paid to the Arizona Contract Holders and the Liquidator for reasonable administrative costs of mailing as provided for herein.

4.4. Settlement and Compromise. This Agreement is a compromise resolution of disputed claims for the purpose of mitigating the costs, uncertainties, and burdens of resolving

such dispute by means other than a settlement. This Agreement does not constitute an acknowledgment or admission in any way on the part of the Parties hereto.

4.5. Cooperation in Implementing Settlement. The Parties shall cooperate in the preparation and execution of any petitions, agreements, orders, or other documents necessary to accomplish the terms, purposes and intent of this Agreement and consummating the transactions herein.

4.6. Entire Understanding, Waiver and Modification. This Agreement contains the entire understanding among the Parties with respect to the matters described herein and supersedes all preexisting or simultaneous agreements, oral or written. No breach of any provision hereof can be waived unless in writing. Waiver of any one breach shall not be deemed to be a waiver of any other breach of the same or any other provision hereof. This Agreement may not be changed, modified or amended except by a written agreement executed by the Parties.

4.7. Counterparts and Originals. This Agreement may be executed in any number of counterparts and by different Parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute one and the same document.

4.8. Binding Effect. This Agreement shall be binding upon, and shall inure to the benefit of, the Parties hereto, their successors-in-interest, heirs, assigns, officers, employees, agents and representatives.

4.9. No Third Party Beneficiaries. This Agreement creates no third party beneficiaries and shall not create any rights or benefits that may be enforced by any persons not party to this Agreement.

4.10. No Interpretation Against Drafter. Because each Party has had the opportunity to draft, review and edit the language in this Agreement, no presumption for or against any Party arising out of the drafting of all or any part of this Agreement will be applied in any action or other proceedings relating to, arising out of, or invoking this Agreement and each Party waives the benefit of any statute or rule of law providing otherwise.

4.11. Inclusion of Recitals, Definitions and Exhibits. The provisions in the Recitals and Definitions section of this Agreement are valid, binding and enforceable. The exhibits are incorporated herein by reference as if set forth in the text hereof.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the undersigned have executed this Agreement for the Release of Statutory Deposit in Arizona on the dates indicated:

THE LIQUIDATOR:

J.P. Schmidt, Insurance Commissioner of the State of Hawaii in his capacity as Liquidator of PrimeGuard Insurance Company, First Assured Warranty Corporation, ISourceAutoWarranty.com, Inc., and Warrantee Wise, Inc.

By: _____

Name: _____

Title: _____

Date: _____

THE DIRECTOR:

Christina Urias

Arizona Director of Insurance

By: Dean Ehler

Name: Dean Ehler

Title: Assistant Director

Date: 6/29/2010

IN WITNESS WHEREOF, the undersigned have executed this Agreement for the Release of Statutory Deposit in Arizona on the dates indicated:

THE LIQUIDATOR:

J.P. Schmidt, Insurance Commissioner of the State of Hawaii in his capacity as Liquidator of PrimeGuard Insurance Company, First Assured Warranty Corporation, ISourceAutoWarranty.com, Inc., and Warrantee Wise, Inc.

By: J.P. Schmidt

Name: J.P. Schmidt

Title: Liquidator

Date: June 16, 2010

THE DIRECTOR:

Christina Urias

Arizona Director of Insurance

By: _____

Name: Dean Ehler

Title: Assistant Director

Date: _____

Attachment 2

Amendment to Agreement to the Release of Statutory Deposit in Arizona
Involving
PrimeGuard Insurance Company,
First Assured Warranty Corporation,
I SourceAuto Warranty.com, Inc. and
Warrantee Wise, Inc.

This Amendment to the Agreement to the Release of Statutory Deposit in Arizona (the "Agreement") is executed on the dates indicated below on the signature page. This Amendment is between and among the following Parties:

Liquidator:

Gordon Ito, Insurance Commissioner of the State of Hawaii, in his capacity as "Liquidator" of PrimeGuard Insurance Company, First Assured Warranty Corporation, I SourceAuto Warranty.com, Inc. and Warrantee Wise, Inc.; and

Director:

Christina Urias, Director of Insurance for the State of Arizona.

RECITALS

WHEREAS, the Liquidator and Director entered into the Agreement on June 29, 2010 wherein the parties agreed to the release the statutory Deposit (as defined in the Agreement) to pay the Arizona Contract Holders (as defined in the Agreement), pursuant to the terms of said Agreement;

WHEREAS, the parties now desire to amend the terms of the Agreement;

NOW, THEREFORE, in consideration of the foregoing, the covenants and agreements set forth below, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby mutually promise, covenant and agree as follows:

1. Definitions. Unless inconsistent with or contrary to the context of the Agreement, the defined terms used in the Agreement shall have the same meanings in this Amendment.

2. Paragraph 3.4. Paragraph 3.4 of the Agreement shall be amended to state as follows, with the amended language in **bold**:

The Liquidator will cause the Deposit, plus any interest earned thereon, to be paid to the Arizona Contract Holders on a pro rata basis in accordance with Exhibit 3.1 as soon as reasonably practicable after receipt of the funds from the Director and, if possible, by combining the payment with a payment of general assets to avoid multiple mailings. In any event, the Liquidator will cause payments from the

Deposit to be mailed to the holders of the Deposit Claims on or before June 30, 2011.

However, if any of the following events make it impossible for the Liquidator to mail payments to the holders of Deposit Claims on or before June 30, 2011, the Liquidator will use his best efforts to cause payments to be mailed to the holders of Deposit Claims as soon as practicable:

(a) the Liquidation Court approves the Agreement, and someone appeals the approval; or

(b) if the Liquidation Court for any other reason beyond the control of the Liquidator, delays in entering an order or final judgment approving the Agreement.

3. No Further Amendment. Except as amended herein, the Agreement remains unamended and unaltered and in full force and effect.

4. Counterparts; Facsimile Signature. This Amendment may be executed in several counterparts, or by facsimile (telecopy) copies, each of which shall be deemed an original, but all of which shall constitute one and the same instrument, binding on both parties hereto, notwithstanding that both of the parties are not signatory to the original or the same counterparts. All of such counterpart signature pages shall be read as though one, and they shall have the same force and effect as though all of the signers had signed a single signature page. If any party signs by means of facsimile (telecopy) copy, such facsimile (telecopy) copy shall be deemed to be an original and effective as of the time and date of such signing, and the signer agrees to promptly forward to the other party the signed original hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment the day and year first above written.

The Liquidator:

Gordon Ito, Insurance Commissioner of the State of Hawaii, in his capacity as "Liquidator" of PrimeGuard Insurance Company, First Assured Warranty Corporation, ISourceAutoWarranty.com, Inc. and Warrantee Wise, Inc.

By:  _____

Name: Gordon I. Ito

Title: Insurance Commissioner

Date: January 19, 2011

The Director:

Christina Urias

Director of Insurance for the State of Arizona.

By: 

Name: Dean Ehler

Title: Assistant Director

Date: 1/14/2011

Attachment 3

KOBAYASHI, SUGITA & GODA

WENDELL H. FUJI 4222-0
CLIFFORD K. HIGA 2950-0
BRUCE A. NAKAMURA 6518-0
ANTHONY F. SUETSUGU 9404-0
First Hawaiian Center
999 Bishop Street, Suite 2600
Honolulu, Hawaii 96813-3889
Telephone: 539-8700

1ST CIRCUIT COURT
STATE OF HAWAII
FILED

2011 MAY -9 AM 11:04

S. TAMANAHA
CLERK

Attorneys for Petitioner GORDON I. ITO
Insurance Commissioner of the State of Hawaii

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

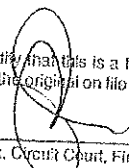
STATE OF HAWAII

GORDON I. ITO, in his capacity as Insurance Commissioner of the State of Hawaii,	) S.P. No. 05-1-0443 RAN
	) (Special Proceedings)
)
Petitioner,	) AMENDED ORDER GRANTING
	) LIQUIDATOR'S MOTION FOR ORDER
vs.	) APPROVING LIQUIDATOR'S AGREEMENT
	) WITH INSURANCE COMMISSIONER OF
PRIMEGUARD INSURANCE COMPANY, INC., A RISK RETENTION GROUP,	) ARIZONA
)
Respondent.	) <u>HEARING</u>
	) Date: March 2, 2011
	) Time: 2:15 p.m.
	) Judge: Honorable Rhonda A. Nishimura
)
	) NO TRIAL DATE SET
)
)

AMENDED ORDER GRANTING
LIQUIDATOR'S MOTION FOR ORDER APPROVING
LIQUIDATOR'S AGREEMENT WITH INSURANCE COMMISSIONER IN ARIZONA

Petitioner GORDON I. ITO's in his capacity as Hawaii Insurance Commissioner and as Liquidator of PrimeGuard Insurance Company (collectively, the "Liquidator"), Motion for Order Approving Liquidator's Agreement with Insurance Commissioner of Arizona came on for

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

hearing before the Honorable Rhonda A. Nishimura on March 2, 2011 at 2:15 p.m. Anthony F. Suetsugu appeared on behalf of the Liquidator. No opposition was filed.

The Court having reviewed the Motion and attached memorandum, declaration and exhibits and having been apprised in the premises;

IT IS HEREBY ORDERED that the Motion for Order Approving Liquidator's Agreement with Insurance Commissioner of Arizona is GRANTED. Pursuant to the Agreement, the Deposit is not a general asset of the Estate. The Deposit and its proceeds may only be paid to the Arizona Contract Holders and the Liquidator for reasonable administrative costs of mailing.

DATED: Honolulu, Hawaii, MAY - 5 2011, 2011.

RHONDA A. NISHIMURA
JUDGE OF THE ABOVE ENTITLED COURT



GORDON I. ITO, in his capacity as Insurance Commissioner of the State of Hawaii v. PrimeGuard Insurance Company, Inc.; S.P. No. 05-1-0443 RAN; **AMENDED ORDER GRANTING LIQUIDATOR'S MOTION FOR ORDER APPROVING LIQUIDATOR'S AGREEMENT WITH INSURANCE COMMISSIONER OF ARIZONA**