

AT RICHMOND, JUNE 13, 2005

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COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION,  
Applicant,

COPY

v.

CASE NO. INS-1994-00218

HOW INSURANCE COMPANY,  
A RISK RETENTION GROUP,  
HOME WARRANTY CORPORATION,  
and  
HOME OWNERS WARRANTY CORPORATION,  
Respondents.

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JUN 28 2005

CANTILO, BENNETT

ORDER APPROVING PLANS OF LIQUIDATION

On October 14, 1994, the Circuit Court for the City of Richmond entered its Final Order Appointing Receiver for Rehabilitation or Liquidation (the "Receivership Order"), which appointed the State Corporation Commission (the "Commission") as Receiver, Steven T. Foster, the Commissioner of Insurance, as Deputy Receiver, and Patrick H. Cantilo as Special Deputy Receiver, and authorized and directed them to administer the business and affairs of HOW Insurance Company, a Risk Retention Group ("HOWIC"), Home Owners Warranty Corporation ("HOW"), and Home Warranty Corporation ("HWC") (collectively, the "HOW Companies"), and to do all acts necessary or appropriate for the rehabilitation or liquidation of the HOW Companies. On May 1, 1996, by Order of this Commission, Alfred W. Gross succeeded Steven T. Foster as Commissioner of Insurance and Deputy Receiver of the HOW Companies. As a result of the receivership, the affairs and business of HWC are administered by the Receiver, the Deputy Receiver, and the special Deputy Receiver, who are vested with all the powers and authority expressed or implied under the provisions of Title 38.2, Chapter 15 of the Code of Virginia.

Liquidation, Approving Claims Bar Date, and Related Matters ("Order Setting Hearing"). The Order Setting Hearing scheduled a hearing for May 17, 2005, to determine whether further efforts to rehabilitate the HOW Companies would be useless such that the Plans of Liquidation should be approved. The Order Setting Hearing also required the Deputy Receiver to send notice and a copy of the Order Setting Hearing to all builders who at one time were members of HWC, to the owners of all homes that are currently enrolled in the HOW Program, and to known creditors of the HOW Companies. The Notice was also to be published in the Richmond Times-Dispatch, the Wall Street Journal, and USA Today. We also directed the Deputy Receiver to file with the Commission prepared testimony and exhibits of each witness expecting to present direct testimony in support of the Application. The Order Setting Hearing also directed the filing of Notices of Participation by Respondents and Respondent Testimony, and provided an opportunity for rebuttal testimony by the Deputy Receiver.

On February 25, 2005, the Deputy Receiver prefiled the testimony and exhibits of Alfred W. Gross, Mike R. Parker and Theodore J. Zubulake. On March 15, 2005, the Deputy Receiver filed his First Supplement to his prefiled direct testimony in which he withdrew certain exhibits previously filed and submitted supplemental exhibits in support of the application.

By March 25, 2005, the Commission had received Notices of Participation from Paul Hollinger, Stephan Levine and M.D.C. Holdings, Inc. ("MDC"). Mr. Hollinger and Mr. Levine indicated that they did not plan to appear at the hearing but both seek relief from the HOW Companies for roofing problems with their homes. Mitchell and Lori Langsner also filed a letter in the case noting that they have an outstanding claim and seek a settlement.<sup>1</sup>

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<sup>1</sup> The Commission addressed this claim in an Order in Case No. INS-1995-00218 issued on April 27, 2005, which found that the Langsners had been fully compensated as to their direct and indirect claims. The Order further noted that any payment of interest compensation deemed owed to the Langsners may be considered by the Commission in a subsequent case or addressed in this proceeding. The Deputy Receiver's Plans of Liquidation do address payment of interest.

The hearing convened as scheduled on May 17, 2005. Patrick H. Cantilo, Esquire, and Howard W. Dobbins, Esquire, appeared on behalf of the Deputy Receiver, Peter B. Smith, Esquire, appeared on behalf of the Bureau of Insurance, and Patricia E. Bruce, Esquire, and Scott D. Albertson, Esquire, appeared on behalf of MDC and Centex. At the hearing, the Commission received evidence in support of the Plans of Liquidation from the Deputy Receiver through its three witnesses. Counsel for MDC and Centex cross-examined the Deputy Receiver's witnesses regarding the proposed allocation methodology for residual assets. At the conclusion of the hearing, counsel for the Deputy Receiver and Centex and MDC presented closing arguments in lieu of briefs.

NOW THE COMMISSION, having considered the record and the evidence presented at the hearing in this case, finds that further efforts to rehabilitate the HOW Companies would be useless, and that the HOW Companies should be liquidated pursuant to the Plans of Liquidation, subject to a modification of the percentage allocation of residual assets to Builder Distributees as discussed herein. We will also authorize the Deputy Receiver, in his reasonable discretion, to establish by directive a period for filing proofs of claims against the HOW Companies, such filing period to end on the Bar Date. Finally, we will direct the Deputy Receiver, upon completion of the liquidation and dissolution of HOW, HOWIC, and HWC pursuant to the Plans of Liquidation, to file a request with the Commission for approval to terminate and close this receivership proceeding.

Regarding the distribution of residual assets to Builder Distributees, we believe that a more reasonable allocation of residual assets is 25% on a per capita basis, or fixed component, and 75% based on the profitability contribution, or variable component. At the hearing, the Deputy Receiver testified that since he could not find a prescribed method of allocation for the residual assets in a risk retention group, he analogized these transactions to the demutualization

persuaded by the "fairness argument" raised by MDC and Centex—namely, that those builders who caused the HOW Companies to suffer losses should not be able to share equally in the distribution of residual assets via the fixed component. We therefore find that a reasonable and fair allocation of assets to Builder Distributees is 25% on a per capita basis, or fixed component, and 75% based on the profitability contribution, or variable component.

Accordingly, IT IS ORDERED THAT:

(1) Further efforts to rehabilitate the HOW Companies would be useless, and the HOW Companies should be liquidated pursuant to the Plans of Liquidation, as modified herein and discussed in Ordering Paragraph (2) below.

(2) With regard to the Distribution of Residual Assets to Builder Distributees, the Deputy Receiver shall modify the Plans of Liquidation to allocate 25% of the assets on a per capita basis, or fixed component, and 75% of the assets based on the profitability contribution, or variable component.

(3) We hereby authorize the Deputy Receiver to adopt a directive implementing the HOWIC Plan of Liquidation, described in Exhibit A to the application as modified herein, if and when he files a written report with the Commission advising that he has received an actuarial projection that HOWIC has sufficient assets to satisfy its liabilities and to declare a dividend to HWC sufficient for HWC to satisfy its liabilities, including the refund of all vested capital contributions.

(4) If the Deputy Receiver does not issue a directive adopting the HOWIC Plan of Liquidation within three years of this Order, he shall return to the Commission for further instruction.

(5) Once the Deputy Receiver adopts the HOWIC Plan of Liquidation and completes the actual liquidating distributions from HOWIC to HWC pursuant thereto, he shall issue a second

(9) The Deputy Receiver, in his reasonable discretion, shall establish by directive a period for filing proofs of claims against the HOW Companies, such filing period to end on the Bar Date (such Bar Date to be no less than 180 days, nor more than 365 days, following the date of the Deputy Receiver's issuance of the directive). All claims (including contingent claims, claims of Eligible Builders for refunds of capital contributions, and claims for increased percentage payments on previously approved claims) against the HOW Companies would be required to be filed before the Bar Date except that the following claims would not be subject to the Bar Date: (i) claims of any kind that have already been submitted properly to the Deputy Receiver, whether general creditor claims, claims for repairs of Major Structural Defects, claims for payment of builder defense costs, claims for breach of warranty, or any other claims, except that, to the extent that a claimant has not submitted the affidavit required to perfect a claim for an increased percentage payment of an approved claim pursuant to a Distribution Notification, such claim for an increased percentage payment of a previously approved claim shall be subject to the Bar Date, (ii) proper administrative expense claims (i.e., claims for payment of services rendered, or goods supplied, to the HOW Companies at the request of the Deputy Receiver after October 14, 1994), (iii) claims covered by HOW Companies' policies and certificates for the repair of covered Major Structural Defects that have not yet manifested themselves as of the Bar Date, (iv) claims by builders for refund of Loss Reserve Deposits, or release of letters of credit, and (v) claims by Builder Distributees to a share of the Residual Assets. Claims submitted after the Bar Date, if approved, would be subordinated in payment to all timely filed claims, with the exception of the claims described in categories (i) through (v) above, which would not be subject to the Bar Date. All claims of whatsoever nature would be permanently barred from sharing in the assets of the HOW Companies if such claims were not submitted to the Deputy Receiver

(14) Upon completion of the liquidation and dissolution of HOW, HOWIC, and HWC pursuant to the Plans of Liquidation, the Deputy Receiver shall file a request with the Commission for approval to terminate and close this receivership proceeding.

(15) This matter is continued generally.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to:

Patrick H. Cantilo, Special Deputy Receiver, HOW Insurance Company, In Receivership, P.O. Box 184, Austin, Texas 78767-0184; Ronald H. Garber, Esquire, Boxley Bolton & Barger, LLP, 227 West Main Street, P.O. Drawer 1429, Raleigh, North Carolina 27602; Paul Hollinger, 55 Raisin Tree Circle, Baltimore, Maryland 21208; William A. Broscious, Esquire, Kepley Broscious, 7201 Glen Forest Drive, Suite 102, Richmond, Virginia 23226; Stephan J. Levine, 57 Raisin Tree Circle, Baltimore, Maryland 21208; Mitchell and Lori Langsner, 3 Becket Court, Princeton Junction, New Jersey 08550; Patricia E. Bruce, Esquire, Capsalis Bruce & Reaser, PLC, 2200 Wilson Boulevard, Suite 800, Arlington, Virginia 22201; and the Commission's Office of General Counsel and Bureau of Insurance.

A True Copy  
Tested  
*Joel M. Reed*  
Clerk of the  
State Corporation Commission