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PRELIMINARY STATEMENT

This brief is submitted on behalf of the Liquidator of Integrity Insurance Company (the "Liquidator" or the "Estate") in support of his motion for reconsideration of the "supplemental" portion of this Court's August 13, 2008 Order (the "Order")¹ denying the motion of Appellants-Movants GLI-F, LLC, Liquidity Solutions, Inc., and Capital Investors LLC (collectively "Appellants") for leave to file an interlocutory appeal. Specifically, the Liquidator moves for reconsideration of the portion of the Order staying him from making any distributions on allowed claims which were or will be allowed between September 30, 2004 and June 30, 2009 "pending completion of all trial court proceedings in this matter" (the "Order", a copy of which is contained in Movant's Appendix at Ma1). The stay, which was not requested by any party to the original motion, should be lifted because it prevents the Liquidator from fulfilling his statutory obligations imposed by the Liquidation Act, N.J.S.A. 17:30-1, et seq. as well as the orders of the Liquidation Court. Specifically, the stay would cause the Liquidator to treat Integrity's claimants unequally since the

¹ While the language of the Order indicates that it was signed on August 13, 2008, it was not stamped "received" by the Appellate Division until August 25, 2008 and was received by counsel for the Liquidator on August 26, 2008.

Liquidator has already made payments relating to many claims which were allowed after September 30, 2004. Thus, while many claimants whose claims were allowed after September 30, 2004 have been paid, the stay will prevent payment to other similarly situated claimants who the Liquidator has not yet paid. The stay will also be prejudicial to the New Jersey Property-Liability Guaranty Association and to any similar organization in another state having substantially the same legal entitlement ("NJPLIGA") awaiting reimbursement from the Estate for payments that it previously made to Integrity's claimants. By virtue of the stay, the Estate will not be able to reimburse NJPLIGA until the affairs of the Estate are completed which could be years away.

PROCEDURAL HISTORY/STATEMENT OF FACTS

As this Court is aware, the Estate has been in liquidation proceedings for 21 years, which has already been the subject of a number of appeals and arguments before this Court as well as before the New Jersey Supreme Court.² In the most recent appeal, Appellants challenged the final bar date set forth in the Liquidation Closing Plan ("LCP") which is the Liquidator's latest plan to wind up the Estate's affairs. Appellants argued that the LCP should incorporate the original bar date of December 31, 2004 (the "2004 Bar Date") from the Fourth Amended Final Dividend Plan (the "FDP"), rather than the June 30, 2009 bar date contained in the LCP (the "2009 Bar Date").³ The Liquidator opposed Appellants' motion on several grounds. First, in choosing the 2009 Bar Date the Liquidator exercised his wide discretionary authority which cannot be disturbed without a showing that his decision was arbitrary and capricious. Second, the Liquidator selected the 2004 Bar Date based in part, on the assumption that Integrity would pay claims

² A more detailed procedural history of the liquidation is set forth in the procedural history/statement of facts contained in the Liquidator's brief which was filed in opposition to the motion for leave to appeal and is incorporated by reference herein.

³ Appellants incorrectly stated that the bar date in the FDP was December 31, 2004. The FDP did not employ the bar date terminology. Instead, December 31, 2004 was the date by which a claimant had to submit claims valued as of the September 30, 2004 claims evaluation date which was effectively a bar date.

which were incurred but not yet reported ("IBNR") to its policyholders - which assumption is no longer relevant since it was rejected by the New Jersey Supreme Court's recent decision requiring the Estate to approve only claims which are "absolute" and not contingent in any way. In the Matter of the Liquidation of Integrity Insurance Company, 193 N.J. 86 (2007). Finally, imposition of the 2004 Bar Date would significantly increase Integrity's administrative expenses since it already paid many claims which were allowed after that date.

While this Court correctly denied Appellants' motion and deferred to the Liquidator's discretion in selecting the 2009 Bar Date, the Court granted supplemental relief which stays the Liquidator from making any further distributions on allowed claims until completion of the trial court proceedings. Mal. Not only was this relief not requested but it interferes with the Liquidator's statutorily imposed duty to treat claimants in the same priority level equally.

Throughout this liquidation, the Estate has applied to the Liquidation Court to make interim distributions to eligible claimants in accordance with this statutory duty. See Certification of Richard L. White dated September 3, 2008 submitted herewith ("White Cert."), ¶2. Integrity's most recent distribution motion was granted on or about May 6, 2008 approving an increase in the distribution on Guaranty

Association allowed Fourth Priority claims from seventy percent (70%) to seventy-five percent (75%) and an increase in the distribution rate on allowed Fourth Priority Claims of Non-Guaranty Association claimants from sixty-five percent (65%) to seventy percent (70%) (the "Distribution Order"). Id. at ¶2 and Ma2-3. Indeed, as noted in our opposition to Appellants' motion for leave to appeal, since the August 12, 2004 Consent Order partially staying implementation of the FDP, the Estate has in many cases made distributions on approximately \$88 million in claims that have been allowed since September 30, 2004. White Cert. ¶2. Imposition of a stay to preclude the Estate from paying out on these claims results in uneven treatment by the Estate to claimants who are entitled to distributions under the Distribution Order.

LEGAL ARGUMENT

THE MOTION FOR RECONSIDERATION
SHOULD BE GRANTED

Pursuant to N.J.S.A. 17:30C-1 et seq. of the Liquidation Statute, the Liquidator is vested with wide discretion in the manner in which he administers the Estate's affairs. See In the Matter of the Liquidation of Integrity Insurance Co., 240 N.J. Super. 480, 490-491 (App Div. 1990); In the Matter of The Liquidation of Integrity Ins. Co., 193 N.J. at 102. Similarly, the Liquidation Court is also given a statutory mandate to exercise wide discretion to fashion any relief which may be necessary to protect the interests of the public. N.J.S.A. 17:30C-5; Integrity, 240 N.J. Super. at 490-491.

As is made clear in the Liquidation Order, one of the Liquidator's powers - and indeed the Liquidator's duty -- is to maximize and marshal the assets of the Estate for distribution to allowed claimants. 214Aa⁴ at ¶¶16, 35. As a direct result of this Court's stay, the Liquidator is unable to fulfill his duty to distribute marshaled assets. The Liquidator is also unable to fulfill his statutory duty to treat all eligible claims of the same priority class equally. See N.J.S.A. 17:30C-26 (establishing five priorities of distribution levels). See In

⁴ Citations in this format are to documents contained in the appendix submitted by Appellants in support of their motion for leave to appeal.

the Matter of First Columbia Life Ins. Co., 724 So.2d 790, 795 (La. Ct. App. 1998) (Under Uniform Insurers Liquidation Act, claims within the same class should be treated equally and thus, should be paid on a pro rata basis); Stephens v. Colaiannia, 942 P.2d 1374, 1380 (Co. Ct. App. 1997) (Under the Uniform Insurers Liquidation Act, the receiver is to "fairly pay[] all appropriate claims on an equal basis by class."). However, the stay will cause the Liquidator to treat claimants in the same priority class differently by prohibiting the Estate from making distributions on claims which have already been allowed, although it has already paid millions of dollars to other claimants whose claims were first allowed after September 30, 2004. To halt these distributions in midstream is exceedingly unfair to the approved claimants unlucky enough not to have received a distribution prior to this Court's Order. As a result, the Liquidator is left in the untenable position of having given preferential treatment to certain allowed priority claimants over others, based upon nothing more than the timing of a distribution payment. White Cert., ¶2.

Moreover, the stay precludes the Liquidator from making statutorily required payments to guaranty fund claimants.

N.J.S.A. 17:30C-31(a) provides in relevant part:

Within 120 days of a final determination of insolvency by a court of competent jurisdiction of this State, the commissioner shall make application to the court for approval of a proposal to disburse assets out of such company's marshaled assets, from time to time as such assets become available, to the New Jersey Property-Liability Insurance Guaranty Association and to any similar organization in another state having substantially the same provision of law.

Clearly, the Estate has assets available for disbursement to guaranty funds. White Cert., ¶5. Yet, under the stay, the Liquidator cannot now make the requisite statutory payments to guaranty fund claimants. In addition, the stay is problematic for the guaranty funds which are obligated to pay Integrity claimants. A perfect example is NJPLIGA.⁵ NJPLIGA makes payments directly to claimants whose claims are approved and then seeks reimbursement for such payments from the Estate. NJPLIGA has already made payments to claimants since September 30, 2004 for which, under the Order, it cannot now be reimbursed. White Cert., ¶3.

If the stay remains in effect, allowed claimants and guaranty funds will have to wait considerable time for payment from the

⁵ We understand that NJPLIGA also intends to submit papers seeking reconsideration of the Order on the ground that it is statutorily and contractually entitled to continued disbursements. The Liquidator is sympathetic to NJPLIGA's situation and makes this motion so that it can continue to fulfill its obligations to both NJPLIGA as well as Integrity's other allowed claimants.

Estate - until at least 2010. White Cert. ¶4. In fact, read literally the Order precludes the Estate from ever distributing its assets to claimants - the very purpose of the liquidation proceedings. The Order stays distribution until "completion of all trial court proceedings in the matter." "Completion" in the context of this liquidation occurs after the Liquidator has been discharged, an event which does not take place until after final distribution of the Estate's assets. The Liquidation Order provides:

When all assets justifying the expense of collection and distribution have been collected and distributed under this Order, the Liquidator shall apply to the Court for discharge.

(214Aa ¶29(a)).

This provision makes clear that distribution of the Estate's assets occurs before the Liquidator is discharged. Logistically, distribution of the Estate's assets simply cannot happen after the Liquidator has been discharged. Thus, the Order effectively prevents the Estate from ever distributing its assets. Surely, this Catch-22 situation is not the result intended by this Court. Accordingly, for this reason as well, this Court should grant the Liquidator's motion and lift the stay imposed by the Order.

CONCLUSION

For all of the foregoing reasons, Integrity requests that this Court reconsider the supplemental portion of its Order and lift the stay precluding Integrity from making claim distributions.

Respectfully submitted,
MAZIE SLATER KATZ & FREEMAN, LLC
Attorneys for Integrity Insurance
Company in Liquidation

By: 

DAVID M. FREEMAN

Dated: September 3, 2008

(H:\DAM\Integrity\FDP\Brf in supp mot reconsid 8-30-08.doc)

AM-739-07T3

ORDER ON MOTION

I/M/O THE LIQUIDATION OF
INTEGRITY INSURANCE COMPANY

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

FILED
APPELLATE DIVISION

DOCKET NO. AM-000739-07T3
MOTION NO. M -006561-07
BEFORE PART: S
JUDGE (S): SAPP-PETERSON
BAXTER

AUG 25 2008

J. M. Chacko

MOTION FILED: JULY 21, 2008 BY: GLI-F
ANSWER (S) FILED: JULY 31, 2008 BY: NJ PROPERTY LIABILITY
INS.
AUGUST 1, 2008 BY: DEPUTY LIQUIDATOR

RECEIVED
APPELLATE DIVISION

SUBMITTED TO COURT: AUGUST 12, 2008

AUG 25 2008

O R D E R

**SUPERIOR COURT
OF NEW JERSEY**

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS ON
THIS 13TH DAY OF AUGUST, 2008, HEREBY ORDERED AS FOLLOWS:

MOTION BY APPELLANT	GRANTED	DENIED	OTHER
- FOR LEAVE TO APPEAL	()	(X)	(X)

SUPPLEMENTAL:

The distribution of any funds to successful claimants for claims made between September 30, 2004 and June 30, 2009 shall be stayed pending the completion of all trial court proceedings in the matter.

BER C-7022-86

FOR THE COURT:

JUZMORO

Paulette Sapp-Peterson
PAULETTE SAPP-PETERSON, J.A.D.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.
J. M. Chacko
CLERK OF THE APPELLATE DIVISION

MAZIE SLATER KATZ & FREEMAN, LLC
103 Eisenhower Parkway
Roseland, New Jersey 07068
(973) 228-9898
Attorneys for Steven M. Goldman,
Commissioner of Banking and
Insurance of the State of New Jersey in his
capacity as Liquidator of the Estate of
Integrity Insurance Company

FILED

MAY - 6 2008

**WILLIAM C. MEEHAN,
P.J.S.C.**

In the Matter of:

THE LIQUIDATION OF
INTEGRITY INSURANCE
COMPANY

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION: BERGEN COUNTY
GENERAL EQUITY PART
Docket No. C-7022-86

Civil Action

**ORDER APPROVING THE LIQUIDATOR'S
MOTION TO INCREASE THE
DISTRIBUTION RATE ON FOURTH
PRIORITY CLAIMS AND AUTHORIZE
DISBURSEMENT OF THE SIXTEENTH
EARLY ACCESS ADVANCE AND THE
SEVENTH INTERIM DISTRIBUTION**

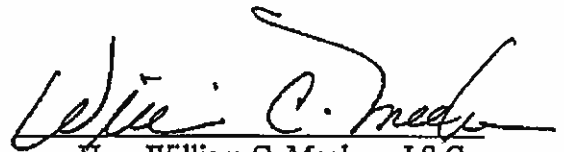
THIS MATTER HAVING BEEN opened to the Court upon the application of Mazie Slater Katz & Freeman, LLC, attorneys for Steven M. Goldman, Commissioner of Banking and Insurance of the State of New Jersey, in his capacity as liquidator (the "Liquidator") of the estate (the "Estate") of Integrity Insurance Company ("Integrity"), for an Order approving the Liquidator's Motion to Increase the Distribution Rate on Fourth Priority Claims and Authorize Disbursement of the Sixteenth Early Access Advance and the Seventh Interim Distribution, and the Court having considered the Certification of Deputy Liquidator Richard L. White submitted in support of this motion, any opposing papers, and the argument of counsel in open Court; and for good cause shown;

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IT IS on this 6th day of ^{May} April, 2008;

ORDERED that the Liquidator's Motion to Increase the Distribution Rate on Fourth Priority Claims and Authorize Disbursement of the Sixteenth Early Access Advance and the Seventh Interim Distribution be, and the same is hereby granted; and it is further

ORDERED that the Liquidator is authorized to make distributions bi-annually on future claims that are allowed and are eligible for distributions, without further Court approval, until such time that the Liquidator requests an increase in the distribution rates.


Hon. William C. Meehan, J.S.C.

PAPERS CONSIDERED:

Notice of Motion _____
Movant's Certification _____
Opposing Papers _____
Other _____

MAZIE SLATER KATZ & FREEMAN, LLC
103 Eisenhower Parkway
Roseland, New Jersey 07068
(973) 228-9898

Attorneys for Steven M. Goldman,
the Commissioner of Banking and
Insurance of the State of New Jersey,
In his capacity as Liquidator of
Integrity Insurance Company

IN THE MATTER OF: : SUPERIOR COURT OF NEW JERSEY
: APPELLATE DIVISION
: Docket No.: AM-739-07T3
THE LIQUIDATION OF :
INTEGRITY INSURANCE :
COMPANY : Sat Below:
: Hon. Robert C. Wilson, J.S.C.
:
: Hearing Before:
: Hon. William J. Meehan, J.S.C.
:
: Docket No. Below: C-7022-86
:
: Civil Action
:
: CERTIFICATION OF RICHARD L. WHITE
: IN SUPPORT OF LIQUIDATOR'S
: MOTION FOR RECONSIDERATION
:

RICHARD L. WHITE, of full age, hereby certifies and
states:

1. I am the Deputy Liquidator of the estate of
Integrity Insurance Company (the "Liquidator" or the
"Estate"). I submit this Certification in support of the
Liquidator's motion for reconsideration of this Court's
August 25, 2008 Order (the "Order") imposing a stay on the
Liquidator from making any further distributions on allowed
claims which were or will be allowed between September 30,

2004 and June 30, 2009 "pending completion of all trial court proceedings in this matter." A copy of the Order is contained in the Movant's Appendix at Ma1. Although the Court denied the motion by Appellants-Movants GLI-F, LLC, Liquidity Solutions, Inc., and Capital Investors LLC (collectively "Appellants") for leave to file an interlocutory appeal to challenge the claims bar date contained in Integrity's Liquidation Closing Plan ("LCP"), the Court entered the stay. Although Appellants' motion was properly denied, the stay should be lifted because, as explained in detail below and in the accompanying memorandum of law, it interferes with the Liquidator in fulfilling his statutory and court imposed obligations to equitably satisfy the claims of Integrity's creditors as well as those of the New Jersey Property Liability Guaranty Association and to any similar organization in another state having substantially the same legal entitlement ("NJPLIGA").

2. Specifically, the stay prevents the Estate from complying with its statutory and court ordered obligations to make distributions and payments on allowed claims equally within certain priority levels as required by the Uniform Insurers Liquidation Act. See N.J.S.A. 17:30C-1 et seq. In accordance with its statutory obligation, Integrity has moved numerous times during this liquidation for permission to

make interim distributions on eligible claims. Integrity's most recent distribution motion was granted by the Superior Court of New Jersey, Bergen County (the "Liquidation Court") on or about May 6, 2008 approving an increase in the distribution on Guaranty Association allowed Fourth Priority Claims from seventy percent (70%) to seventy-five percent (75%) and an increase in the distribution rate on allowed Fourth Priority Claims of Non-Guaranty Association claimants from sixty-five percent (65%) to seventy percent (70%) (the "Distribution Order", a copy of which is contained in Integrity's Appendix at Ma2-3). Indeed, since the August 12, 2004 Consent Order partially staying implementation of the first closing plan proposed by the Liquidator, the Estate has allowed, and in many cases made distributions on approximately \$88 million in claims that have been allowed since September 30, 2004. Although the Estate has already made payments to many of these claimants, the Liquidator has not yet made payments to others. As a result of this stay, the Liquidator is precluded from paying these claims which will result in disparate treatment of claimants who are in the same priority class. Surely, this Court did not intend for the Estate to run afoul of its obligations under the Liquidation Statute by giving preferential treatment to some claimants over others.

3. In addition, the stay is particularly unfair to guaranty fund claimants such as NJPLIGA which make payments to Integrity's policyholders and are then reimbursed for such payments by the Estate.¹ Integrity is authorized by both the Distribution Order and the Liquidation Statute to pay allowed NJPLIGA reimbursement claims. See N.J.S.A. 17:30C-31(a). However, the stay prevents the Liquidator from reimbursing NJPLIGA for claims which they have paid to Integrity policyholders. In fact, I understand from NJPLIGA that they have additional paid claims for which they have not been reimbursed by Integrity. Thus, NJPLIGA is now in the unenviable position of having laid out monies for which they cannot be reimbursed by the Estate until the completion of all trial court proceedings in the matter of Integrity Insurance Company.

4. Moreover, if the stay remains in effect, allowed claimants and guaranty funds will have to wait a considerable amount of time for payment. I expect that the affairs of the Estate will not be concluded until 2010, and perhaps later. This is because of the time remaining for final claims to be submitted to the Estate, the time necessary for the Estate to review and determine whether such claims are to be allowed,


¹ I am informed by NJPLIGA and its counsel that it is submitting papers in support of this motion for reconsideration on similar grounds.

and the time necessary for motions to be made and approved by the Liquidation Court to close the Estate.

5. Finally, Integrity's liquidity is not an issue in satisfying currently allowed but unpaid claims (approximately \$18 million) or, indeed, future allowed claims in the ordinary course of the liquidation. As of August 31, 2008, Integrity has in excess of \$330,000,000 of liquid assets available to support such distributions.

6. Accordingly, we respectfully request that Integrity's motion for reconsideration be granted and the stay be reversed.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.


RICHARD L. WHITE

Dated: September 3, 2008

(H:\DAM\Integrity\FDP\Cert - White - supp mot for reconsid 08-30-08.doc)