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## I. INTRODUCTION

### A. Court Review of This Proposal

The proposed Plan of Liquidation of the Consumers United Insurance Company is being filed with the Court and, upon approval by the Court of the procedure for notifying potential claimants and establishing a hearing on the Proposed Plan, a copy of the Proposed Plan will be mailed by first class mail, for which CUIC will obtain a Form 3606 Certificate of Mailing, to the following creditors or other interested persons:

1. All State Guaranty Associations or Funds;
2. All policyholders of CUIC to which CUIC issued policies in force as of March 1, 1992 or subsequent to that date, whether or not such policyholders have submitted any claims to CUIC or notified CUIC of any pending or anticipated claims;
3. Lead counsel on declaratory judgment suits currently pending against CUIC;
4. All insurance brokers and agents with whom CUIC had business dealings according to the records of CUIC available to the Receiver;
5. All reinsurers to whom CUIC ceded business;
6. All reinsurers from whom CUIC assumed business;
7. All other known creditors;
8. Stockholders of CUIC; and
9. All State Insurance Commissioners.

The Receiver anticipates that the compilation of the above list and mailing to the above-referenced creditors and interested parties should be completed by September 1, 1994.

Prior to the Court's hearing on this proposal, interested parties are invited to submit written objections to or written comments on this Plan. The written objections or comments should be forwarded directly to the Court of Chancery at the following address:

Register in Chancery  
Court of Chancery  
1000 King Street  
Wilmington, Delaware 19801

Telephone Numbers:  
(302) 571-7540 or  
(302) 577-2440

All objections or comments must be postmarked on or before November 15, 1994. The objections or comments should specifically reference the case name and docket number: IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE IN AND FOR NEW CASTLE COUNTY: IN THE MATTER OF THE LIQUIDATION OF CONSUMERS UNITED INSURANCE COMPANY, CIVIL ACTION NO. 12789.

In addition, on or before November 15, 1994, one copy of the written objections or comments should be delivered, by hand, first class mail, or overnight delivery, to the Deputy Receiver of CUIC at the following address:

Mr. Fred Marro  
Deputy Receiver  
Consumers United  
Insurance Company in Liquidation  
First Federal Plaza, 3rd Floor  
710 North King Street  
Wilmington, Delaware 19801

Telephone Number:  
(302) 739-4251

A hearing has been scheduled before the Court for December 15, 1994 at 10:30 a.m. to consider all objections and

comments filed. This Plan will be adopted by the Court after the hearing unless one or more interested parties show cause why this Plan should not be adopted.

B. Background of the Liquidation

On February 9, 1993, pursuant to 18 Del C 5905, an Order of Rehabilitation was entered against CUIC. The Commissioner and her successors were appointed the Rehabilitators of CUIC.

On May 5, 1994, CUIC was adjudged insolvent and, pursuant to 18 Del. C. §5906, a Stipulated Liquidation and Injunction Liquidation Order ("Liquidation Order") was entered on that date.

The Commissioner, as the Receiver of CUIC, was directed to immediately take possession and control of the property, assets, business and affairs of CUIC and to liquidate the same pursuant to the provisions of Chapter 59 of the Delaware Insurance Code, 18 Del. C. ch. 59. The Commissioner was authorized by the Liquidation Order to take such actions as the nature of this cause and the interests of the policyholders, creditors and stockholders of CUIC and the public may require.

The Commissioner was vested by the Liquidation Order as the Receiver with title to all property, contracts and rights of action of CUIC and was authorized to deal with the property, business and affairs of CUIC and to sue and defend for the Company, or for the benefit of CUIC's policyholders, shareholders and creditors in courts and tribunals, agencies or arbitration panels for this State and other states as the Insurance Commissioner or in the name of CUIC.

On July 28, 1994, the Court of Chancery of the State of Delaware in and for New Castle County ordered that any and all claims against CUIC not presented to the Receiver on or before March 1, 1995 shall be forever barred. A claim liquidation date has not yet been set.

## II. DEFINITIONS

The following definitions constitute the definitions of specific terms of art and shall apply to this Plan only:

**CLAIM BAR DATE.** The term "Claim Bar Date" shall mean that date set by the Court at the request of the Receiver by which the Receiver must receive written notice of all claims for such claims to be considered for inclusion in the estate. In this estate, the Claim Bar Date is the same date as the Creditor Bar Date, March 1, 1995.

**CREDITOR BAR DATE.** The term "Creditor Bar Date" shall mean March 1, 1995.

**COURT.** The term "Court" shall mean the Court of Chancery of the State of Delaware in and for New Castle County.

**CREDITOR.** The term "Creditor" shall mean any individual or legal entity which has a claim against the estate. This term shall include claims covered by 18 Del. C. §5918(e) and general creditor claims.

**GUARANTY ASSOCIATION.** The term "Guaranty Association" shall refer to any of the state guaranty associations or funds, which are or could be handling claims on behalf of the estate of CUIC:

**LIQUIDATION DATE.** The term "Liquidation Date" shall mean May 5, 1994, the date on which the Court declared CUIC insolvent and ordered the liquidation of CUIC.

**LIQUIDATION ORDER.** The term "Liquidation Order" shall refer to the May 5, 1994 Order entered by the Court in the above-captioned matter.

**POLICYHOLDER.** The term "Policyholder" shall refer to any individual or legal entity to whom CUIC directly issued a policy of insurance. This term shall not apply to reinsurance obligations assumed or allegedly assumed by CUIC.

**RECEIVER.** The term "Receiver" refers to the Honorable Donna Lee H. Williams, the Commissioner of Insurance of the State of Delaware, in her capacity as the Liquidator of the CUIC, and her successors in office.

**UNDERLYING CLAIMANT.** The term "Underlying Claimant" shall refer to any individual or legal entity which gave notice of a claim against a Policyholder of CUIC.

### III. COLLECTION OF ASSETS

#### A. Special Deposits

CUIC was required to post special deposits in order to transact insurance business. The Delaware liquidation statute defines a "special deposit claim" as "any claim secured by a deposit made pursuant to statute for the security or benefit of a limited class or classes of persons but not including any general assets." 18 Del. C. §5901(11). The funds currently held in the special deposits are to be used first to satisfy the special deposit claims. The balance, if any, of funds remaining in the special deposit fund will then be returned to the estate for distribution as general assets.

If the amount of funds in a special deposit fund is insufficient to satisfy the claims of the class of persons for whom the fund was established, such claimants may share in the general assets, but such sharing shall be deferred until general creditors and also claimants against other special deposits who have received smaller percentages from their respective special deposits have been paid percentages of their claims equal to the percentage paid to such claimants from the special deposit. 18 Del. C. §5918(c). The balance due under any special deposit claims remaining unpaid shall share equally with the general creditor claims.

Where possible, prior to the final resolution of the special deposit claims, the Receiver or her assistants will attempt to determine the value of the unresolved claims covered by the special deposits and to have any amounts in excess of the value of such claims returned to the estate as quickly as possible.

B. Other Assets

The Receiver will also attempt to collect other assets of CUIC, including but not limited to premiums due, agents' balances due, salvage, subrogation and deductibles. In addition, CUIC intends to sell some tangible assets, such as furnishings, intangible assets, regulatory licenses and settle outstanding litigation.

#### IV. PRIORITY OF CLAIMS

##### A. Administrative Expenses

The Delaware liquidation statute provides that administrative expenses are to be paid out of the available assets of the estate prior to the payment of any other claims. 18 Del. C. §§5913(f), 5918(e). Such expenses include, but are not necessarily limited to, the following expenses:

- i) Salaries of CUIC officers and employees of the estate (salaries incurred during the rehabilitation and liquidation period);
- ii) Consulting fees during the liquidation period, including fees for legal services, financial services, computer services, and claims adjusting services;
- iii) General administrative expenses incurred during the rehabilitation and liquidation period, such as rent, equipment, supplies, and electricity;
- iv) Guaranty Association administrative expenses, including reasonable defense and claim adjustment expenses incurred by the Guaranty Associations in the handling of the "covered claims" against CUIC. (See, 18 Del. C. §4211(b));
- v) Funds necessary to administer special deposit funds; and
- vi) Defense costs and claim adjustment expenses incurred during the rehabilitation period which were specifically authorized by the receiver.

The statute provides that administrative expenses which have been incurred are to be paid prior to distribution of any assets for the benefit of any Policyholders or general creditors and that a sufficient reserve should be established for future reasonable administrative expenses. The estate will prepare a

budget of administrative expenses paid as well as an estimate of the future administrative expenses necessary to complete the liquidation of CUIC.

B. Wages

The statute also provides that wages, not to exceed \$500 per employee, for services rendered within three months prior to the entry of the Liquidation Order will be paid prior to the Policyholder and general creditor claims. 18 Del. C. §§5926, 5918(e).

C. Taxes

The Delaware liquidation statute further provides that taxes should also be paid out of the remaining assets of the estate prior to any distribution for the benefit of any Policyholders or general creditors. 18 Del. C. §5918(e). The Receiver shall pay all outstanding taxes prior to any distribution to lower classes of Creditors in accordance with the statutory directive.

D. Policyholder Claims

Section 5918(e) of Title 18 of the Delaware Code provides that:

Claims by policyholders, beneficiaries and insureds arising from and within the coverage of and not in excess of the applicable limits of insurance policies and insurance contracts issued by the company, and liability claims against insureds which claims are within the coverage of and not in excess of the applicable limits of insurance policies and insurance contracts issued by the company, and claims of the Delaware Insurance Guaranty

Association, the Delaware Life and Health Insurance Guaranty Association, as the case may be, and any similar organization in another state shall have priority in a liquidation proceeding over all other claims except those for expenses of administration, wages covered by § 5926 of this title and taxes.

Such claims would include indemnity payments and return premium, whether the claim is made by the policyholder or the guaranty association. In addition, claims at this priority level would also include loss adjustment expenses paid by the policyholder. See, 18 Del. C. §5918(e) and 4211(b).

E. Other Claims of The Federal Government

After payment in full of the administrative expenses, wages, taxes and policyholder claims as noted in Subsections IV(A) through (D) above, the Receiver will pay any other claims of the United States Government to the extent of available funds, pursuant to the June 11, 1993 decision of the United States Supreme Court in United States Dept. of the Treasury v. Fabe, 61 U.S.L.W. 4579 (U.S. Jun. 11, 1993). This Subsection IV(E) does not apply to any claims of the United States Government to the extent such claims fall within the categories of Subsections IV(A) through (D) above. Claims of the United States Government which fall within the categories in Subsections IV(A) through (D) above will be included in that category with the other claims in that category for any distributions.

F. General Creditors Claims

The Delaware liquidation statute does not specifically address general creditor claims. The statute merely addresses the treatment of special deposit claims and the priority given to administrative expenses, wages, taxes, and Policyholder claims. 18 Del. C. §§5913(f), 5918(e) and 5926. By implication, all remaining claims, if timely, are placed into the category of "general creditor claims." Such claims include, but are not limited to, the following claims:

1. The claims of insurers which ceded insurance business to CUIC ("Assumed Reinsurance");
2. The claims by attorneys and vendors for defense and investigation costs incurred by CUIC prior to February 9, 1993, the date on which the Rehabilitation Order was entered;
3. Claims for subrogation, contribution or indemnification against CUIC; and
4. Claims by Creditors for administrative expenses and other general expenses of operation of CUIC incurred prior to February 9, 1993, the date on which the Rehabilitation Order was entered.

If there are any funds available after payment in full of the administrative expenses, wages, taxes, policyholder claims and other claims of the Federal Government as set forth in Subsections IV(A) through (E) above, the Receiver shall pay, to the extent funds are available, the general creditor claims.

#### G. Status of Barred Claims

This Plan of Liquidation provides that Creditors and claims which do not meet the criteria set forth in this Plan will be barred from any distribution of the estate's assets as creditors pursuant to 18 Del. C. §5918(e) or as general creditors. However, if there are any assets remaining after the expenses and claims set forth in Section IV(A) through (F) above have been satisfied in full, the Receiver will declare that a surplus exists pursuant to 18 Del. C. §5928(a)(2). In that event, the liquidation of CUIC would be conducted as though the Company were solvent and claims not covered by a timely proof of claim form and claims of which the Receiver did not have actual notice on or before the Claim Bar Date would be eligible to share in the surplus assets after the expenses and claims set forth in Section IV(A) through (F) above have been satisfied in full.

#### H. Ownership Interests of Stockholders

If any assets remain after the expenses and claims set forth in Section IV(A) through (F) above have been satisfied in full and any barred claims have been satisfied in full, the remaining assets shall be distributed among the stockholders or shareholders of the Company in proportion to their ownership interests.

V. March 1, 1995 CREDITOR BAR DATE

The Liquidation Order, as modified by the Order dated July 28, 1994 and, required that all Creditors file proofs of claim with the Receiver on or before March 1, 1995. That date allows the Receiver to establish the list of Creditors eligible to participate in any distributions of assets from the estate, subject to the availability of assets.

A. Creditors Included in the Estate

Creditors which file a timely proof of claim form with the Receiver on or before March 1, 1995 have completed the necessary first step toward having their claims included in the estate and possibly be eligible for distribution of the estate's assets. However, the filing of a proof of claim form does not guarantee that a specific claim which that Creditor has against the estate will be included in the estate. Issues relating to specific claims will be addressed in Section VI below.

A Creditor's proof of claim form will be considered to have been timely filed under any of the following circumstances:

1. A proof of claim form filed by a Guaranty Association with the Receiver in accordance with the Receiver's instructions on or before March 1, 1995 will be deemed by the Receiver to be a timely proof of claim filing for all individual claims which are "covered claims" under that Guaranty Association's enabling statute. However, it should be noted that the Guaranty Association's proof of claim only covers that portion of the claim

which is covered under the Guaranty Association's enabling statute. To protect its rights to a claim for any amounts in excess of the Guaranty Association's monetary limits or otherwise not covered by the Guaranty Association, a claimant must file a proof of claim for such excess or other non-covered amount directly with the Receiver;

2. If a Policyholder or general creditor files a properly-completed proof of claim form with the Receiver on or before March 1, 1995, each individual claim for which a proof of claim form has been timely filed by or against that Policyholder or general creditor will be reviewed to determine if those claims are entitled to share in any distribution of the estate's assets, subject to compliance with the Claim Bar Date as set forth in Section VI below; and

3. For individual claims under 59 Del. C. §5918(e), if the Policyholder against whom the claim was brought did not file a timely proof of claim form and the individual claims do not qualify as "covered claims" under any Guaranty Association's enabling statute, the filing of a properly-completed timely proof of claim form by the Underlying Claimant will protect the Policyholder's claim, as to that individual claim only.

Creditors, including Policyholders, Guaranty Associations and general creditors, which filed timely proofs of claim or had timely proofs of claim filed on their behalf, and Creditors which filed "excused" proofs of claim, as that term is set forth in Section V(B) below, will be included in the list of Creditors eligible to participate in any distributions of assets from the

estate pursuant to this Plan of Liquidation, subject to the availability of assets.

B. Exception Process for Excused Late-Filed Proofs

The Receiver will establish an exception process for such late-filed proofs of claim which will consist of an administrative review by the Receiver or her assistants to determine if the late filing was excused. Under this procedure, the Receiver or her assistants will make a determination that the late filing was "excused" or "unexcused," based upon whether the party seeking acceptance of the late-filed proof of claim form submits proof, accompanied by a statement taken under oath, that they were not given timely notice of the liquidation proceedings. As the estate is to receive notice of the existence of all individual claims by the Claim Bar Date, the party seeking acceptance of the late-filed proof of claim form must also show that they gave notice of one or more individual claims to the estate on or before the Claim Bar Date in order to have a late-filed proof of claim form accepted. A late-filed proof of claim form for which no individual claims were submitted to the estate on or before the Claim Bar Date will not be accepted as there would be no timely claims against the estate.

The party seeking acceptance of the late-filed proof will then be advised in writing of the determination. Claims covered by proofs of claim which the Receiver determines are "excused" will be included in the group of Creditors eligible to share in the

distribution of assets pursuant to this Plan of Liquidation, subject to the other provisions of this Plan of Liquidation.

At the time the Receiver notifies a potential Creditor that their late-filed proof of claim form is "unexcused," the Receiver will advise the potential Creditor of their right to appeal the decision of the Receiver to the Court within thirty (30) days of the mailing date of the notice of the Receiver's decision. Such potential Creditors which fail to appeal or which appeal and do not prevail on appeal will be categorized as "barred claims," which will not share in any distributions of the estate's assets unless and until the Company is declared solvent pursuant to 18 Del. C. §5928(a)(2).

C. Creditors Excluded from the Estate

All Creditors which do not file timely proof of claim forms or which do not have their late-filed proof of claim forms accepted under the exception process set forth above will be barred from any distributions of the estate's assets unless and until the Company is declared solvent pursuant to 18 Del. C. §5928(a)(2).

VI. MARCH 1, 1995 CLAIM BAR DATE

Notice of each individual claim must be given to the Receiver on or before the Claim Bar Date of March 1, 1995. Upon a determination by the Receiver that it is in the best interests of the policyholders and other creditors of the estate to set a date by which all claims must be liquidated or forever barred, the Receiver shall move the Court for the setting of such a date, which shall be referred to as the "Claim Liquidation Date."

A. Claims Included in the Estate

A Creditor under 18 Del. C. §5918(e) (regarding Policyholder and Guaranty Association indemnity claims) which has filed one or more timely-filed or "excused" late-filed proof of claim forms with the estate may have one or more individual claims against a policy issued by CUIA. Each claim against the policy of a Policyholder, including the claims for indemnity being handled by the Guaranty Associations, will be assigned a claim number.

Individual claims of which the Receiver had actual notice on or before the Claim Bar Date of March 1, 1995 will be considered to have been timely-filed provided each claim is also covered by a timely-filed proof of claim form. However, each such claim must still be reviewed by the Receiver or her assistants to determine if the claim is valid, including whether the claim is covered under the policy in question. In addition, the Receiver will review each general creditor claim to determine if the claim is valid. 18 Del. C. §5918(e).

Once the Receiver or her assistants have determined that a particular claim is in compliance with 18 Del. C. ch. 59 and this Plan, the claim will be included in the list of claims eligible to share in any distribution of assets pursuant to this Plan of Liquidation, subject to the availability of assets. The list of eligible claims will be divided into separate sections for each class of claims.

Pursuant to Section VII of this plan, the valid claims made pursuant to 18 Del. C. §5918(e) against a particular policy issued by CUIIC will be entitled to share in the estate on a "first settled" basis. The values assigned to all claims against a particular policy cannot exceed the aggregate limits of that policy. 18 Del. C. §5918(e). Therefore, inclusion of a claim on the list of claims will not guarantee that any funds will be available for distribution of assets to satisfy a particular claim on the list of eligible claims if the total value of the claims against a particular policy on the list of claims exceeds the aggregate policy limits.

**B. Claims Excluded from the Estate**

Claims under 18 Del. C. §5918(e) which are determined by the Receiver to be outside the coverage of the policy, claims under 18 Del. C. §5918(e) for which the aggregate limits of the policy have been exhausted by the Receiver as set forth in Section VII below, and claims under 18 Del. C. §5918 and general creditor claims which are determined not to be valid claims will be barred from the estate.

Claims not covered by a timely proof of claim form and claims of which the Receiver did not have actual notice on or before the Claim Bar Date will also be deemed barred claims. However, such claims shall be eligible to share in distributions of the estate's assets if a surplus pursuant to 18 Del. C. §5928(a)(2) is declared and the estate is thereafter deemed solvent.

Upon an initial determination by the Receiver or Deputy Receiver that a claim is excluded from the estate, the Receiver or Deputy Receiver will notify the Creditor or potential Creditor by written notice of the denial of the claim. The notice from the Receiver or Deputy Receiver will advise the Creditor or potential Creditor of their right to an appeal to the Court. The notice shall provide that the Creditor or potential Creditor which filed such claim(s) must file their notice of appeal with the Court within thirty (30) days of the mailing date of the notice of the Receiver or Deputy Receiver's determination. 10 Del. C. §145; 18 Del. C. §5902.

VII. PROCEDURE FOR SETTLEMENT OF CLAIMS  
TO ESTABLISH BASE VALUE OF CLAIM

A. Court Approval

All settlements of claims between a Creditor and the Receiver are made conditioned upon Court approval.

B. Availability of Assets

All settlements of claims between a Creditor and the Receiver are subject to the availability of assets. Claims filed pursuant to 18 Del. C. §5918(e) will not share in any distribution of assets unless and until all reasonable administrative expenses, wages pursuant to 18 Del. C. §5926, and taxes are paid and a sufficient reserve established for the payment of future reasonable administrative expenses necessary to conclude the liquidation of

the estate. Other claims of the Federal Government will not share in any distribution of the estate's assets unless and until all valid claims filed pursuant to 18 Del. C. §5918(e) are satisfied in full. General creditor claims will not share in any distribution of assets unless and until all such other valid claims of the Federal Government are satisfied in full. Claims not covered by a timely proof of claim form and claims of which the Receiver did not have actual notice on or before the Claim Bar Date will not share in any distribution of assets unless and until all such general creditor claims are satisfied in full and the Company is declared solvent pursuant to 18 Del. C. §5928(a)(2). The stockholders or shareholders of CUIC will not share in any distribution of the assets unless and until all administrative expenses, wages, taxes, valid claims filed pursuant to 18 Del. C. §5918(e), other claims of the United States Government, valid general creditor claims, claims filed under late-filed, unexcused proofs of claim and claims filed after the Claim Bar Date are satisfied in full.

C. Policy Limits

Pursuant to 18 Del. C. §5918(e), the total value of all claims against a single Policyholder under a single policy cannot exceed the policy limits under such policy. In determining whether aggregate policy limits have been reached for a given policy, the estate shall take into account the payments made to or on behalf of the Policyholder prior to the Liquidation Date, settlements made with the Underlying Claimants on behalf of the estate and the

Policyholder by any Guaranty Association on or subsequent to the Liquidation Date, any settlements between the Receiver and the Underlying Claimants to establish the value of a particular claim, and any settlements between the estate and the Policyholder establishing the remaining value of a particular policy.

While CUIC was operating as an ongoing insurance company, the amount of the aggregate limit which was not exhausted was determined based upon payment of claims (and, where loss adjustment expenses, including legal expenses, are included within the policy limits, on payment of expenses). However, in order to ensure that the estate will not value any claims against a single policy in excess of the policy limits and to avoid interference with the operations of the Guaranty Associations, the determination of the amount of the aggregate limit which has been exhausted will be made taking into consideration the total of all paid claims and all settled claims against a single policy, including a settlement between the estate and the Policyholder determining the remaining value of the policy.

D. Settlements with Underlying Claimants

1. Covered Claims Handled by Guaranty Associations

The various Guaranty Associations will likely settle some of the claims with the Underlying Claimants on behalf of the estate and the Policyholders. The Receiver will accept those bona fide settlements made by the Guaranty Associations for which the value of the settlement is determined to be reasonable, and which do not

exceed the aggregate limits of a particular policy issued by CUIC. It shall be the responsibility of each Guaranty Association to inquire of the estate to establish whether the aggregate policy limit has been exhausted prior to entering into a settlement with an Underlying Claimant.

To the extent that a Guaranty Association makes payment on a claim which is deemed by the Delaware liquidation statute and this Plan to be a general creditor claim, the Guaranty Association will receive reimbursement for such payments as if the Guaranty Association were a general creditor.

## 2. Non-Covered Claims

Some claims may not qualify as "covered claims" under any of the Guaranty Associations' enabling statutes. Such "non-covered claims" will be handled directly by the Receiver and her assistants. Whenever possible, the Receiver and her assistants will negotiate settlements of such claims. Such settlements shall take into account the amount of the aggregate policy limits already exhausted on a particular policy so that the aggregates of a given policy are not exceeded.

## 3. Claims Made Directly Against CUIC

If a claim has been brought directly against CUIC in a state in which claims against an insured are permitted to be brought directly against an insurance carrier, CUIC will seek dismissal of the claim in the court in the jurisdiction in which

the claim was brought. Such claim would instead be handled in the liquidation proceedings. The estate shall attempt to negotiate the settlement of such claims with the Underlying Claimant.

#### 4. Declaratory Judgment Actions

CUIC may have been named in one or more declaratory judgment actions regarding the coverage under policies issued by the Company. Consistent with the Liquidation Order, the estate will seek dismissal from such actions. Any such claims are to be resolved in the liquidation proceedings. In the event the Receiver is unable to resolve these claims, the Receiver will make a separate motion, if necessary, to the Court to determine the method of resolving such claims.

#### E. Settlements with Guaranty Associations

The Receiver anticipates an overall settlement of the various Guaranty Associations' administrative expenses and claim adjustment expenses. 18 Del. C. §4211(b). The overall settlement of these expenses will take into account the reasonable amount of administrative and claim adjustment expenses incurred as of the time of the settlement and an estimate of future expenses deemed by the Receiver to be necessary for the Guaranty Association to adjust the remaining claims. If the Receiver is unable to negotiate an overall settlement of such expenses with one or more of the Guaranty Associations, the Receiver will make a separate motion, if

necessary, to the Court to determine the method of resolving these expenses.

The Receiver also anticipates negotiating an overall settlement of the value of the indemnity payments made or to be made by the Guaranty Associations on the covered claims against CUIC. The overall settlement of the indemnity payments will take into account the payments already made on behalf of an insured of CUIC.

#### F. Settlements with Policyholders

The Receiver anticipates that there may be some amount of a claim which is in excess of or not otherwise covered by a Guaranty Association's monetary limits. In addition, while it is currently anticipated that all claims of the estate will be handled by the Guaranty Associations, some of the underlying claims against the Policyholders may not be covered claims under any state guaranty statute. For non-covered claims or claims which exceed or are otherwise not included within the Guaranty Associations' monetary limits, the Receiver or her assistants will attempt to negotiate a resolution of such claims.

#### VIII. ADJUSTMENT OF BASE VALUE OF CLAIMS TO ACCOUNT FOR AVAILABILITY OF ASSETS

Once the value of all of the claims against the estate or a sufficient number of claims to warrant a partial distribution has been established, the Receiver will provide the Court with a distribution plan. The plan or plans of distribution will identify

the value assigned to each claim, by each level of priority. The Receiver will also determine the amount of assets available for distribution after deducting the reasonable administrative expenses, wages and taxes already incurred and taking into account the reasonable administrative expenses estimated to be incurred by the estate. The amount available after deducting the incurred and anticipated administrative expenses and the incurred taxes will be referred to as the "Net Assets Available."

The Receiver will then determine the amount to be distributed to the creditors pursuant to 18 Del. C. §5918(e) in the particular distribution. The United States Government (to the extent such claims do not qualify for assignment to a higher class of claims) and general creditors will not be entitled to any distribution of assets from the estate unless and until all incurred and estimated administrative expenses, wages and incurred taxes have been or will be paid, and the full value of all valid claims pursuant to 18 Del. C. §5918(e) which have been included in the estate have been satisfied in full.

IX. EARLY ACCESS TO GUARANTY ASSOCIATIONS

The Receiver shall pursuant to this Plan disburse assets out of CUIC's assets from time to time as such assets become available to the Guaranty Associations.

A. Equitable Allocation of Available Funds

The Receiver shall provide for the equitable allocation of disbursements to each of the Guaranty Associations in amounts calculated in accordance with this Section IX of the Plan, on account of the payments made by the Guaranty Associations for which they could assert claims against the Receiver. If the assets available for disbursements from time to time do not equal or exceed the amount of such payments made by the Guaranty Associations, then disbursements shall be in the amount of available assets. The Receiver shall evaluate, ascertain and determine the amount of assets, required reserves, potential claims and liabilities under this Section IX of the Plan, and make an initial calculation under this Section IX of the Plan, within ninety (90) days after this Plan is approved, and shall continue to make such calculations under this Section IX of the Plan at least annually thereafter.

B. Calculation of Early Access Payments

The Receiver shall make the following calculations and determinations based upon the information available to her at the time of the calculations (See, the form setting forth the

calculation required by this Section IX(B) attached hereto as Exhibit 1):

1. Liquid Assets. The Receiver shall determine the amount of liquid assets. The Receiver shall not be required to increase liquid assets for purposes of this Section IX of the Plan by making forced or quick sales that result in obtaining less than market value for assets. Liquid assets shall not include real estate, book value of a subsidiary, assets pledged as security, special or general deposits held by other states, or any assets over which the Receiver does not have complete control. On any calculation date, the total amount of liquid assets available shall be determined after payment of expenses of administration incurred by the Receiver and after reimbursement to each of the Guaranty Associations of their expenses that are entitled to priority pursuant to 18 Del. C. §§5913(f), 5918(e). Such Guaranty Association administrative expenses shall include the Guaranty Association's expenses of adjusting covered claims and legal expenses incurred by the Guaranty Association in defending such claims.

2. Reserve for Administrative Expenses. The Receiver shall determine the total amount of reserves reasonably necessary through the estimated closing date of the estate for the payment of the expenses of administration entitled to priority pursuant to

18 Del. C. §§5913(f), 5918(e), including, but not limited to, the following:

- a) Salaries of CUIC officers and employees of the estate (salaries incurred during the liquidation period);
- b) Consulting fees during the liquidation period, including fees for legal services, financial services, computer services, and claims adjusting services;
- c) General administrative expenses incurred during the liquidation period, such as rent, equipment, supplies, and electricity;
- d) Guaranty Association administrative expenses, including reasonable defense and claim adjustment expenses incurred by the Guaranty Associations in the handling of the "covered claims" against CUIC; and
- e) Funds necessary to administer special deposit funds.

3. Reserve for Employee Wage Claims

The Receiver shall determine the amount of employee wage claims entitled to priority pursuant to 18 Del. C. §§5926, 5918(e). See, Section IV(B) above.

4. Reserve for Taxes

The Receiver shall determine the amount of taxes entitled to priority pursuant to 18 Del. C. §5918(e). See, Section IV(C) above.

5. Reserve for Non-Covered Policy Claims

The Receiver shall determine the total reserves for unpaid liabilities under CUIC's policies entitled to priority pursuant to 18 Del. C. §5918(e) that will not be paid by the Guaranty Associations. See, Section IV(D) above.

6. Reserve for Covered Policy Claims

The Receiver shall determine the total amount of liabilities under CUIC's policies entitled to priority pursuant to 18 Del. C. §5918(e) that have been paid or reserved by the Guaranty Associations. See, Section IV(D) above.

7. Amount of Liabilities Paid by Guaranty Associations

The Receiver shall determine the total amount of liabilities under CUIC's policies entitled to priority pursuant to 18 Del. C. §5918(e) which have been paid to-date by the particular Guaranty Association receiving an Early Access Distribution pursuant to this Section IX of the Plan. See, Section IV(D) above.

#### 8. Early Access Distribution

The Early Access Distribution to be made to the particular Guaranty Association is calculated as follows:

Early Access Distribution = [Liquid Assets - (Reserve for Administrative Expenses + Reserve for Employee Wage Claims + Reserve for Taxes)] x [Amount of Liabilities Paid by Guaranty Associations Divided by (Amount of Liabilities paid by Guaranty Associations + Reserve for Non-Covered Policy Claims + Reserve for Covered Policy Claims)]

#### C. Early Access Agreement

Any payment to be made under the provisions of this Section IX of the Plan shall be conditioned upon the Guaranty Associations executing and returning to the Receiver an early access agreement in the form of the agreement attached hereto as Exhibit 2, which exhibit is incorporated in and made a part of this Section IX of the Plan. The amount that the Liquidator is obligated to pay for Early Access Distributions due hereunder shall be reduced by the amount of any unreleased statutory/special deposit maintained in the state of the particular Guaranty Association.

## X. OUTLINE OF ASSET DISTRIBUTION PROCESS

### A. Initial Partial Distribution of Assets

The Receiver anticipates making an initial partial distribution of assets as soon as possible. The date selected for the initial distribution of assets will then be determined as soon as the Receiver estimates that the assets collected to date will be sufficient to pay a dividend (such percentage to be known as the "Dividend Percentage") of at least ten (10) percent on the claims under 18 Del. C. §5918(e), after payment of reasonable administrative expenses already incurred, wages and taxes and taking into account the estimated reasonable future expenses of administration.

#### 1. Claims for which a final value has been established

Upon the determination that there are sufficient assets for an initial partial distribution, the Receiver will determine the amount to be paid on each claim for which a final value has been established by final judgment or final settlement by multiplying the Dividend Percentage by the value of each such claim. The resulting amount will be paid to the Underlying Claimant, Policyholder, or Guaranty Association, as the case warrants.

2. Claims for which a final value has not been established

Upon determination that an initial partial distribution will be made, the Receiver will also calculate the dividend estimated payable on claims for which a final value has not yet been established by multiplying the Dividend Percentage by the estimated value of such claims. That sum will be set aside for the Policyholder under whose policy or policies the claim was brought. The dividend will be payable to the Underlying Claimant, the Policyholder, or the Guaranty Association, as the case warrants, once the final value of the claim has been established. As is set forth in Section VII(D)(3) above, interest earned on the funds which are set aside will accrue to the benefit of the general assets of the estate.

B. Additional Partial or Full Distributions of Assets

The Receiver will request authorization from the Court for one or more distributions of assets upon a finding that there are assets available after the initial partial distribution. The timing of and Dividend Percentage applied to such distributions will be determined in such a manner as to efficiently expend the remaining resources of the estate.

WHEREFORE, the Receiver, the Commissioner of Insurance of the State of Delaware as Liquidator and on behalf of CUIC, by and through her undersigned attorney, respectfully submits this Plan of Liquidation for the approval of this Honorable Court.

LAW OFFICES OF JEFFREY K. BARTELS

BY:   
DIANE J. BARTELS

First Federal Plaza  
Suite 110  
710 King Street  
Wilmington, DE 19801  
(302) 656-7207

Attorney for the Receiver of  
The Consumers United  
Insurance Company

DATED: July 21, 1994

EXHIBIT 1

**SECTION IX OF THE PLAN: EARLY ACCESS**

**FORM TO BE USED FOR THE CALCULATION OF  
THE AMOUNT OF THE EARLY ACCESS DISTRIBUTION**

A.	Liquid Assets	\$ _____	
B.	Reserve for Administrative Expenses	(\$ _____)	
C.	Reserve for Employee Wage Claims	(\$ _____)	
D.	Reserve for Taxes	(\$ _____)	
	Liquid Assets Available for Distribution [A - (B + C + D)]	\$ _____	
E.	Amount of Losses Paid by Guaranty Association	\$ _____	
F.	Reserve for Noncovered Claims	\$ _____	
G.	Reserve for Covered Claims	\$ _____	
			divided by
	Total Reserves (E + F + G)	\$ _____	
	Ratio of Guaranty Association Losses to Total Reserves		X _____
H.	Amount of Early Access Distribution	\$ _____	

EXHIBIT 2

**EARLY ACCESS AGREEMENT**

THIS EARLY ACCESS AGREEMENT (the "Agreement"), entered into and effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 199\_\_\_\_, by and between The Honorable Donna Lee H. Williams, the Insurance Commissioner of the State of Delaware and her successors and assigns, as Liquidator (the "Liquidator") of the International Underwriters Insurance Company in Liquidation ("CUIC"), 3rd Floor First Federal Plaza, 710 North King Street, Wilmington, Delaware 19801, and the \_\_\_\_\_ Insurance Guaranty Fund/Association ("\_\_\_IGA" or "\_\_\_IGF").

**WITNESSETH:**

WHEREAS, on May 5, 1994 (the "Liquidation Order Date"), in the Court of Chancery of the State of Delaware in and for New Castle County (the "Liquidation Court") under Cause No. 12789, a Stipulated Liquidation and Injunction Order was entered (the "Liquidation Order") against Consumers United Insurance Company and, pursuant to such Order, Commissioner Williams was appointed the Liquidator; and

WHEREAS, Delaware, \_\_\_\_\_ and \_\_\_\_\_, the states in which CUIC did business prior to the entry of the Liquidation Order have enacted insurance guaranty fund or association laws requiring that certain statutorily defined liabilities against an insolvent insurance company (the "Covered Claims") be paid by the state guaranty funds or associations; and

WHEREAS, the \_\_\_\_\_ Insurance Guaranty Association ("\_\_IGA") has notified the Liquidator that, pursuant to the laws of its state, the \_\_ IGA is required to pay the Covered Claims of CUIC as a consequence of the Liquidation Order; and

WHEREAS, the Liquidator and \_\_IGA believe the following agreements are necessary (i) to coordinate the servicing and payment of obligations by the insurance guaranty funds and associations which are handling Covered Claims, (ii) to assure equality in the treatment of insurance guaranty fund and association claims for reimbursement from the assets of CUIC and (iii) to ensure the proper return of early access payments by the \_\_IGA to the liquidator in the event that said funds must be allocated to comply with the Liquidator's statutory obligations.

#### AGREEMENTS

NOW, THEREFORE, in consideration of the mutual covenants set forth in this Agreement, the Liquidator and \_\_IGA agree as follows:

1. **Access to Records and Information.** The Liquidator and \_\_IGA mutually agree to provide each other with reasonable access to certain business records and information, as follows:

1.1 The Liquidator will provide \_\_IGA with access, during normal business hours, to the books, records and files of CUIC held by the Liquidator and will respond affirmatively and in good faith to all reasonable requests from \_\_IGA for information, files and documents pertaining to insurance coverages issued by CUIC. The Liquidator will use his or her best efforts to provide

\_\_IGA with appropriate information from CUIC's records showing unearned premiums on each in-force policy.

1.2 \_\_IGA will provide the Liquidator with access, during normal business hours, to the books, records and files of CUIC held by \_\_IGA and will respond affirmatively and in good faith to all reasonable requests from the Liquidator for information, files and documents pertaining to the adjudication, administration and payment of Covered Claims. At least once each quarter, \_\_IGA will provide the Liquidator with management report(s) in accordance with the National Association of Insurance Commissioners' ("NAIC") Standard Automated Data Reporting Format, and such other information as may reasonably be required by the Liquidator. Reports shall be mailed by the \_\_IGA to the Liquidator at the address set forth in section 5 of this Agreement or to such other address as the Liquidator may from time-to-time designate in writing.

**2. Salvage, Subrogation and Early Access.** The Liquidator and \_\_IGA mutually agree as follows with respect to salvage, subrogation and early access rights:

2.1 All rights of CUIC in net salvage and subrogation recovery and collection in connection with losses paid by \_\_IGA to the extent such rights exist, will be retained and accounted for by the \_\_IGA. Any portion of salvage and subrogation received by \_\_IGA in connection with losses paid by CUIC prior to the date of the Liquidation Order shall be sent by \_\_IGA to the Liquidator on a monthly basis using forms to be provided by the Liquidator.

2.2 The Liquidator shall provide \_\_IGA with such early access to and equitable distributions from the assets of the estate of CUIC as shall be provided to other state insurance guaranty funds or associations, in accordance with the insurance and liquidation laws of the State of Delaware. Early access distributions shall include, by way of illustration and not limitation, funds from special deposits of state insurance departments, direct disbursements from the Liquidator and funds received under expense reimbursement agreements. \_\_IGA agrees to return to the Liquidator early access distributions received by \_\_IGA, together with any income earned thereon, if such repayment shall be determined by the Liquidator to be necessary for the payment of (i) the claims of secured creditors or (ii) claims of an equal or higher priority to those of \_\_IGA, as established by the insurance laws of the State of Delaware. In the event that the Liquidator is ordered by a court of competent jurisdiction to pay a claim at a higher priority than the priority established for such claim for purposes of calculating any early access distributions, the \_\_IGA shall, within thirty (30) days after notice is given by the Liquidator in accordance with section 5, or within sixty (60) days after such notice is given if it is necessary for the \_\_IGA to make an assessment, return the required portion of any early access distribution received by \_\_IGA, together with any income earned thereon, to the Liquidator, so that funds may be reallocated accordingly.

3. **Omnibus Proof of Claim.** \_\_\_IGA shall file with the Liquidator and the Liquidator shall reasonably approve an omnibus proof of claim, as supplemented from time-to-time with data reported in accordance with section 1.2, for any portion of a paid claim which constitutes a "Covered Claim" under the \_\_\_IGA's state law. The omnibus proof of claim and supplements shall (i) be materially consistent with the reports more particularly described in section 1.2 above and (ii) be in a form mutually acceptable to the Liquidator and \_\_\_IGA.

4. **Final Distributions and Audit.** The Liquidator shall, prior to any final distribution of assets, be authorized to audit the financial accounts, records and procedures of the \_\_\_IGA with respect to receipt of assets and early access distributions and payment of Covered Claims. \_\_\_IGA will, within thirty (30) days after notice is given by the Liquidator in accordance with section 5, or within sixty (60) days after such notice is given if it is necessary for the \_\_\_IGA to make an assessment, return to the Liquidator any early access distributions received by the \_\_\_IGA which are in excess of the amount ultimately determined by the Liquidator to be due the \_\_\_IGA as the final distribution of the assets of CUIC. The Liquidator and the \_\_\_IGA shall cooperate in making arrangements for the final disposition of the information, files and documents received the \_\_\_IGA from CUIC or the Liquidator.

5. **Notice.** Any notice required or permitted under the terms of this Agreement to be given to the parties shall be deemed given

(i) if actually received by the intended recipient by any means of manual delivery or electronic transmission or (ii) if posted by prepaid certified mail, return receipt requested, or (iii) if consigned to and receipted by a commercial delivery service and addressed as follows:

5.1 If to the Liquidator:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone: \_\_\_\_\_

Telecopier: \_\_\_\_\_

With a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone: \_\_\_\_\_

Telecopier: \_\_\_\_\_

5.2 If to the \_\_IGA:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone: \_\_\_\_\_

Telecopier: \_\_\_\_\_

With a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone: \_\_\_\_\_

Telecopier: \_\_\_\_\_

5.3 A copy of such Notice referenced by this Section 5 shall also be sent to the following:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

6. **Merger and Modification.** This Agreement merges all prior offers and agreements of every kind and expresses the full and final intent of the parties. This Agreement shall not be modified except by an instrument in writing, executed by the authorized representative of each of the parties.

7. **Jurisdiction and Choice of Law.** \_\_\_IGA agrees to submit to the exclusive jurisdiction of the Liquidation Court solely with respect to the enforcement of this Agreement, or any claim, issue or dispute arising out of or relating to this Agreement, or the Plan for Disbursements of Assets (defined in Section 8 below). \_\_\_IGA agrees to irrevocably appoint the Insurance Commissioner of the State of \_\_\_\_\_ as its agent for service of process in any such matter, service of process being deemed complete upon the service of process upon the Insurance Commissioner of the State of \_\_\_\_\_ and the mailing by ordinary United States Mail of a copy of such process to \_\_\_IGA. This Agreement shall in all

respects be governed by the laws of the State of Delaware.

8. **Compliance and Early Access Plan.** The Liquidator and the \_\_\_IGA shall promptly comply with all applicable requirements of the Delaware law and the Plan for Disbursements of Assets. If the \_\_\_IGA fails for any reason to forward to the Liquidator assets of the CUIC, or funds or assets due to the Liquidator pursuant to this Agreement (the "Liquidator Assets"), the Liquidator retains the right, in addition to any other rights he may have, to set off against any future disbursements to the \_\_\_IGA the amount of such Liquidator Assets.

9. **Waiver.** The parties agree that the execution of this Agreement shall in no way operated to waive any rights any of the parties may otherwise have.

10. **Court Approval.** This Agreement shall not become effective until it is approved by the Liquidation Court.

11. **Termination.** This Agreement shall terminate upon the closing of the estate of CUIC.

IN WITNESS WHEREOF, this Agreement has been executed by the parties as of the first date above written.

LIQUIDATOR

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed Name)

Title: \_\_\_\_\_

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_ IGA

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed Name)

Title: \_\_\_\_\_

Attest: \_\_\_\_\_

Title: \_\_\_\_\_