

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

IN THE MATTER OF)
GREAT ATLANTIC INSURANCE) C.A. No. 10436
COMPANY IN LIQUIDATION)

ORDER

WHEREAS, the Receiver of Great Atlantic Insurance Company, through his attorney, has moved the Court for an Order regarding the approval of the Proposed Phase One of the Plan of Liquidation of the Great Atlantic Insurance Company ("Proposed Phase One");

WHEREAS, all interested parties were permitted until December 23, 1991 to submit written objections or comments on the Proposed Phase One;

WHEREAS, the Court held a hearing on January 24, 1992 to consider the Proposed Phase One and all objections to and comments on the Proposed Phase One by interested parties;

WHEREAS, it appears that no interested party has shown good cause why the Proposed Phase One should not be adopted;

WHEREAS, it appears that the Proposed Phase One of the Plan of Liquidation is in the best interest of the liquidation of Great Atlantic and the creditors of Great Atlantic;

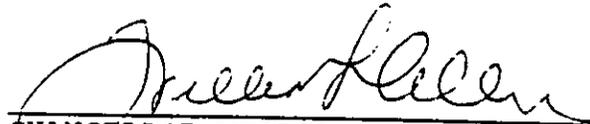
NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. The Proposed Phase One of the Plan of Liquidation of the Great Atlantic Insurance Company in Liquidation is approved in its entirety; and

2. The Receiver, his deputies and his assistants shall perform such duties as are expressed in the aforesaid Proposed Phase One of the Plan of Liquidation.

Dated:

1-24-92


CHANCELLOR WILLIAM T. ALLEN

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

IN THE MATTER OF)
GREAT ATLANTIC INSURANCE) C.A. No. 10436
COMPANY IN LIQUIDATION)

PROPOSED PHASE I OF
PLAN OF LIQUIDATION
OF THE GREAT ATLANTIC
INSURANCE COMPANY

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DATED: NOVEMBER 3, 1991

EXHIBIT A

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I. INTRODUCTION

A. Court Review of This Proposal

Proposed Phase One of the Plan of Liquidation of the Great Atlantic Insurance Company is being filed with the Court and copies are being mailed certified mail, return receipt requested, upon the following creditors or other interested persons:

- (a) All State Guaranty Associations or Funds, including but not limited to the eleven (11) state guaranty associations/funds which are handling claims on behalf of Great Atlantic;
- (b) All creditors, including policyholders and general creditors, which filed a proof of claim if any claims of such creditors are not covered by a guaranty association or fund's enabling statute;
- (c) Underlying Claimants who filed a proof of claim for policyholder claims not covered by a guaranty association or fund;
- (d) Policyholders with known open indemnity claims but which did not file a proof of claim;
- (e) Lead counsel on declaratory judgment suits currently pending against Great Atlantic;
- (f) The following insurance brokers:

Alexander & Alexander
Frank B. Hall
Johnson & Higgins
Marsh & McLennan
Sullivan Payne
John Ryan

- (g) The United States Environmental Protection Agency;
- (h) Stockholders of Great Atlantic; and
- (i) All State Insurance Commissioners.

Prior to the Court's hearing on this proposal, interested parties are invited to submit written objections to or written comments on this Proposed Phase One of the 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 Monday, December 23, 1991. 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 GREAT ATLANTIC INSURANCE COMPANY IN LIQUIDATION, CIVIL ACTION NO. 10436.

In addition, on or before Monday, December 23, 1991, one copy of the written objections or comments should be delivered, by hand, first class mail, or overnight delivery, to the Deputy Receiver of Great Atlantic at the following address:

Frank L. MacArtor
Deputy Receiver
Great Atlantic Insurance
Company in Liquidation
710 North King Street
Wilmington, Delaware 19801

Telephone Number:
(302) 888-7717

A hearing has been scheduled before the Court for Friday, January 24, 1992 at 10:30 a.m. to consider all objections and comments filed. This Proposed Phase One will be adopted by the Court after the hearing unless one or more interested parties show cause why this Proposed Phase One should not be adopted.

B. Background of the Liquidation

The Great Atlantic Insurance Company ceased writing insurance business in 1985. On November 17, 1988, pursuant to 18 Del. C. §5905, an Order of Rehabilitation was entered against Great Atlantic. The Commissioner and his successors in office were appointed the Rehabilitators of GAICO. On August 11, 1989, Great Atlantic was adjudged insolvent and pursuant to 18 Del. C. §5906 an Order of Liquidation was entered on that date.

The Commissioner, as the Receiver of GAICO, was directed to immediately take possession and control of the property, assets, business and affairs of Great Atlantic 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 Order of Liquidation to take such actions as the nature of this cause and the interests of the policyholders, creditors and stockholders of GAICO and the public may require.

The Commissioner was vested by the Order of Liquidation as the Receiver with title to all property, contracts and rights of action of Great Atlantic and was authorized to deal with the property, business and affairs of Great Atlantic and to sue and

defend for the Company, or for the benefit of Great Atlantic'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 Great Atlantic.

On August 23, 1989, the Court of Chancery of the State of Delaware in and for New Castle County ordered that any and all claims against Great Atlantic not presented to the Receiver on or before February 12, 1990 shall be forever barred and that any and all claims against Great Atlantic not liquidated on or before August 13, 1990 shall be forever barred. By Order dated July 30, 1990, the Court of Chancery extended the August 13, 1990 deadline to February 12, 1991.

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 February 12, 1991.

CREDITOR BAR DATE. The term "Creditor Bar Date" shall mean February 12, 1990.

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 or all of the following eleven (11) state guaranty associations or funds, which are or could be handling claims on behalf of the estate of Great Atlantic:

Arizona Property & Casualty Insurance Fund
Delaware Insurance Guaranty Association
Florida Insurance Guaranty Association
Missouri Property & Casualty Insurance Guaranty Association
Montana Insurance Guaranty Association (through Western Guaranty Fund Services)
Nevada Insurance Guaranty Association
New Jersey Surplus Lines Insurance Guaranty Fund
New York Property & Casualty Security Fund - Liquidation Bureau
Texas State Insurance Department - Liquidation Division
Utah Property & Casualty Insurance Guaranty Association
Washington State Insurance Guaranty Association

LIQUIDATION DATE. The term "Liquidation Date" shall mean August 11, 1989, the date on which the Court declared Great Atlantic insolvent and ordered the liquidation of Great Atlantic.

ORDER OF LIQUIDATION. The term "Order of Liquidation" shall refer to the August 11, 1989 Order entered by the Court in the above-captioned matter, as modified by the subsequent August 23, 1989 and July 30, 1990 Orders in the same matter.

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

RECEIVER. The term "Receiver" refers to the Honorable David N. Levinson, the Commissioner of Insurance of the State of Delaware, in his capacity as the Liquidator of the Great Atlantic Insurance Company, and his 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 Great Atlantic.

III. COLLECTION OF ASSETS

A. Reinsurance Recoverables

While Great Atlantic was operating as an ongoing insurance company, it ceded certain insurance business to various reinsurers or pools of reinsurers which agreed to assume such business. Great Atlantic is still owed balances from some of these reinsurers for claims and loss adjustment expenses paid. In addition, Great Atlantic has also posted reserves and incurred but not reported claim ("IBNR") amounts to the accounts of some of these reinsurers.

Great Atlantic is in the process of collecting the outstanding balances due the estate and negotiating commutations of the existing reserves and IBNR with many of these reinsurers. The estate has engaged the services of BCS Management Inc. to assist in the negotiation of the reinsurance commutation agreements. At the conclusion of the negotiation of each commutation agreement, the agreement is executed and submitted to the Court for approval.

B. Special Deposits

Great Atlantic was required to post special deposits in several jurisdictions in order to transact insurance business in those jurisdictions. 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 his assistants are attempting 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.

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 Great Atlantic officers and employees during the rehabilitation and liquidation periods and officers and employees of the estate of Great Atlantic;
- 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 periods, 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 Great Atlantic;
- 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 is preparing a

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

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 Order of Liquidation will be paid prior to the Policyholder and general creditor claims. 18 Del. C. §§5926, 5918(e).

C. Taxes

The Delaware liquidation statute 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 proposes to 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.

While the reasonable administrative expenses of the Guaranty Associations are reimbursed by the estate prior to any distribution to Policyholders or general creditors, the indemnity payments made by the Guaranty Associations on behalf of the estate and its Policyholders are treated the same as the claims of other Policyholders pursuant to the terms of 18 Del. C. §5918(e).

E. 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 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 Great Atlantic ("Assumed Reinsurance");
2. The claims by attorneys and vendors for defense and investigation costs incurred by Great Atlantic prior to November 12, 1988, the date on which the Order of Rehabilitation was entered; and

3. Claims by Creditors for administrative expenses and other general expenses of operation of Great Atlantic incurred prior to November 12, 1988, the date on which the Order of Rehabilitation was entered.

F. Status of Barred Claims

This Phase One of the 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 (E) 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 Great Atlantic 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 February 12, 1991 would be eligible to share in the surplus assets after the expenses and claims set forth in Section IV(A) through (E) above have been satisfied in full.

G. Ownership Interests of Stockholders

If any assets remain after the expenses and claims set forth in Section IV(A) through (E) 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. FEBRUARY 12, 1990 CREDITOR BAR DATE

The Order of Liquidation, as modified by the Order dated August 23, 1989, required that all Creditors file proofs of claim with the Receiver on or before February 12, 1990. 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 filed a timely proof of claim form with the Receiver on or before February 12, 1990 have completed the necessary first step toward having their claims included in the estate and possibly 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 February 12, 1990 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;

2. If a Policyholder or general creditor filed a properly-completed proof of claim form with the Receiver on or before February 12, 1990, all individual claims 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 February 12, 1991 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

Several potential Creditors have requested that the Receiver accept late-filed proofs of claim. Some of these Creditors have alleged that they did not receive notice of the liquidation proceedings prior to the February 12, 1990 deadline and have filed affidavits with the Receiver in support of their grounds for filing late. Other Creditors have requested that late proofs of claim be accepted but were given timely notice of the liquidation proceedings and failed to provide a justification for filing a late proof of claim form.

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 his assistants to determine if the late filing was excused. Under this procedure, the Receiver or his 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 that they were not given timely notice of the liquidation proceedings. As the estate was to receive notice of the existence of all individual claims by February 12, 1991, 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 February 12, 1991 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 February 12, 1991 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 determined were "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 Phase One of the Plan of Liquidation.

At the time the Receiver notifies a potential Creditor that their late-filed proof of claim form was "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. FEBRUARY 12, 1991 CLAIM BAR DATE

The Order of Liquidation, as modified by the Order dated August 23, 1989, paragraph 2, provides that "[a]ny and all claims against GAICO not liquidated on or before August 13, 1990 shall be forever barred." The date by which claims were to be liquidated was extended from August 13, 1990 to February 12, 1991 by the Order dated July 30, 1990.

A. Claims Included in the Estate

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

Individual claims of which the Receiver had actual notice on or before February 12, 1991 will be considered to have been timely-filed provided the claims are also covered by a timely-filed proof of claim form. However, each such claim must still be reviewed by the Receiver or his 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 his 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 two sections, with claims under 18 Del. C. §5918(e) separated from general creditor 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 Great Atlantic 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.

3. 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 February 12, 1991 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 Deputy Receiver that a claim is excluded from the estate, the Deputy Receiver will notify the Creditor or potential Creditor by written notice of the denial of the claim. The notice from the Deputy Receiver will advise the Creditor or potential Creditor of their right to an administrative review of the Deputy Receiver's decision by the Receiver or his delegate who shall act as the administrative hearing officer. The notice shall provide that the Creditor or potential Creditor which filed such claim(s) must file their notice of appeal with the Receiver within thirty (30) days of the mailing date of the notice of the Deputy Receiver's determination.

If, after the administrative hearing, the administrative hearing officer reverses the Deputy Receiver's decision and determines that the claim should be included in the estate, the claim shall be added to the list of valid claims. If, after the administrative hearing, the administrative hearing officer upholds the Deputy Receiver's determination, the Creditor or potential Creditor which filed such claim(s) will be notified of their right

to appeal the administrative hearing officer's decision to the Court within thirty (30) days of the mailing date of the notice of the administrative hearing officer's decision.

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. General creditor claims will not share in any distribution of assets unless and until all such valid claims filed pursuant to 18 Del. C. §5918(e) 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 February 12, 1991 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 Great Atlantic 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), valid general creditor claims, claims filed under late-filed, unexcused proofs of claim and claims filed after February 12, 1991 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 Great Atlantic 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 are in the process of settling 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 Great Atlantic. 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 Phase One of the 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 do not qualify as "covered claims" under any of the Guaranty Associations' enabling statutes. Such "non-covered claims" are being handled directly by the Receiver and his assistants. Whenever possible, the Receiver and his assistants have negotiated or 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 Not Amenable to Settlement

It is anticipated that some claims filed pursuant to 18 Del. C. §5918(e), whether covered by a Guaranty Association's enabling statute or not covered by such statute, will not be amenable to settlement with the Underlying Claimant within a reasonable period of time. Some of these claims will not be amenable to settlement due to the inability to reach agreement with the Underlying Claimant; other claims may be a portion of a larger claim with multiple parties which will take an undetermined period of time to resolve. The Receiver may establish a value for each of these claims and set aside funds equal to the proportional share of the value for all such claims based upon the Dividend Percentage outlined in Section IX(A) below, up to the remaining policy limits within the aggregate policy limits. Interest earned on the funds which are set aside will accrue to the benefit of the general assets of the estate.

4. Claims Made Directly Against Great Atlantic

Several states in which claims against Great Atlantic currently exist permit direct claims against an insurance carrier when a claim is brought against an insured under a particular policy of insurance or when a judgment against the insured has not been satisfied. In such states, Great Atlantic may be a defendant to an action brought under a particular policy. For such actions, Great Atlantic has sought or will seek dismissal of the claim in the court in the jurisdiction in which the claim was brought. Such claim will be handled in the liquidation proceedings. The estate shall attempt to negotiate the settlement of such claims with the Underlying Claimant.

5. Declaratory Judgment Actions

Great Atlantic has been named in several declaratory judgment actions regarding the coverage under policies issued by the Company. Consistent with the Order of Liquidation, the estate is seeking dismissal from such actions. These 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 Great Atlantic. The overall settlement of the indemnity payments will take into account the payments already made on behalf of an insured of Great Atlantic. In addition, if the aggregate limits of a particular insured's policy have not been exhausted by the sum of the indemnity payments made by Great Atlantic prior to liquidation, the indemnity payments made or to be made pursuant to a fully executed settlement agreement and release, and the value established by Great Atlantic for non-covered claims pursuant to a fully executed settlement agreement and release, the Receiver or his assistants may negotiate the value of any remaining claims being handled by the Guaranty Association and such value will be used to determine the amount to be set aside pursuant to Section IX(A)(2) below until such claims are resolved.

F. Settlements with Policyholders

Some of the underlying claims against the Policyholders are not covered claims under any state guaranty statute. Additionally, some of these claims may not be resolved for many years. Therefore, the Receiver proposes to reach a settlement with Policyholders with numerous unresolved claims to determine the aggregate policy limit remaining after all paid claims and settled claims, including claims settled by the Guaranty Associations, are deducted. The Receiver or his assistants will then negotiate with the insured a remaining value under each policy. This negotiated amount, together with the paid claims and settled claims, will constitute the maximum amount payable under the policy. The negotiated amount will be used to determine the amount to be set aside pursuant to Section IX(A)(2) below, pending the resolution of all claims remaining unresolved under the particular policy.

G. Inability to Reach Settlement with Policyholders or Guaranty Associations

In the event that the Guaranty Association or Policyholder fails to resolve all unresolved claims within eight (8) months of the date of the Court's order adopting this Phase One of the Plan of Liquidation, the procedure set forth below will apply to such unresolved claims:

1. The Guaranty Association or Policyholder will be notified by written notice from the Deputy Receiver of the Deputy Receiver's initial determination of the value to be assigned to each unresolved claim for which a value has not been established

and accepted by the Receiver. The notice from the Deputy Receiver shall inform the Guaranty Association or Policyholder of their right to an administrative review of the Deputy Receiver's decision by the Receiver or his delegate who shall act as the administrative hearing officer. The notice shall provide that the Guaranty Association or Policyholder must file their notice of appeal with the Receiver within thirty (30) days of the mailing of the notice of the Deputy Receiver's determination of the value to be assigned to the unresolved claim.

2. If, after the administrative hearing, the administrative hearing officer reverses the Deputy Receiver's decision and determines that a claim should be assigned the value requested by the Guaranty Association or Policyholder, the claim shall be recorded at such value.

3. If, after the administrative hearing, the administrative hearing officer upholds the Deputy Receiver's determination or determines that the claim should be assigned a value other than the value requested by the Guaranty Association or Policyholder, the Guaranty Association or Policyholder will be notified of their right to appeal the administrative hearing officer's decision as to the value to be assigned to the claim to the Court within thirty (30) days of the mailing date of the notice of the administrative hearing officer's decision. 10 Del. C. §145; 18 Del. C. §5902.

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 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 general creditors will not be entitled to any distribution of assets from the estate unless and until all incurred and estimated administrative expenses 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. OUTLINE OF ASSET DISTRIBUTION PROCESS

A. Initial Partial Distribution of Assets

Subject to the resolution of the status of potential claims by the United States Government against Policyholders pursuant to the various Federal environmental protection statutes, 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.