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Vermont Superior Court
Washington Unit
21-CV-00348

**STATE OF VERMONT**

**SUPERIOR COURT**
**WASHINGTON UNIT**

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| COMMISSIONER OF THE DEPARTMENT OF FINANCIAL REGULATION<br>PLAINTIFF,<br><br>v.<br><br>EMERGENCY PHYSICIANS INSURANCE EXCHANGE RISK RETENTION GROUP<br>RESPONDENT. | **CIVIL DIVISION**<br>DOCKET NO. 21-cv-348 Wncv |

# REHABILITATOR'S FIFTH STATUS REPORT

I, J. David Leslie, Special Deputy Rehabilitator, hereby submit this Fifth Status Report regarding the rehabilitation of Emergency Physicians Insurance Exchange Risk Retention Group ("EPIX" or the "Company").

1. On February 18, 2021, the Commissioner of the Department of Financial Regulation ("Commissioner") filed a Petition for Order of Rehabilitation for EPIX pursuant to 8 V.S.A. § 7051, seeking, among other things, authorization to take possession and control of the assets of EPIX, to administer those assets under the general supervision of the Court, and to implement the proposed Plan of Rehabilitation. The Court granted the Commissioner's petition by entering its Order for Rehabilitation of EPIX ("Rehabilitation Order") on February 26, 2021. The Rehabilitation Order appointed the Commissioner as Rehabilitator, granted the requested authority, and directed the Rehabilitator to implement the Plan of Rehabilitation. The Rehabilitator appointed me to serve as Special Deputy Rehabilitator.

2. Notice. Following entry of the Rehabilitation Order, the Rehabilitator provided notice of the rehabilitation to all former EPIX members (the Company has had no in-force policies since September 1, 2020) including with that notice a Q&A document that described the reasons for the Commissioner's petition, the Plan of Rehabilitation, and the effect of rehabilitation on policyholders. Notice of rehabilitation has also been provided to regulators, defense counsel, EPIX vendors with then current claims, the Company's reinsurer, and other affected parties. Further, counsel for the Rehabilitator has participated in telephone calls with many individual insureds, defense counsel, and plaintiffs' counsel regarding the Company's insolvency, the effects of rehabilitation, and next steps.

3. Plan of Rehabilitation. Because EPIX is insolvent, the provision of a defense to insureds with open claims or the payment of losses insured under the Company's policies could create preferences under the insurance laws. See 8 V.S.A. § 7067. The Plan of Rehabilitation therefore contemplated that EPIX would cease providing its insureds with a defense, that insureds would assume responsibility for the defense of claims against them, and that EPIX would reimburse 40% of those defense expenses as well as 40% of insured loss. The Rehabilitator has reached out to policyholders and defense counsel to describe the Plan of Rehabilitation, discuss the necessity of policyholders engaging defense counsel directly, explain the reimbursement process, and answer questions. Through July 31, 2023, the Rehabilitator received and processed loss adjustment expenses totaling $1,631,567 and made reimbursements (at the 40% rate) totaling $644,491. During the same period, the Rehabilitator received proof of loss totaling $8,995,000 and made indemnity reimbursements (at the same 40% rate) totaling $3,598,000.

4. Prior Status Reports. I filed the Rehabilitator's First Status Report with the Court on May 24, 2021, advising as to the provision of notice, describing implementation of the Plan of Rehabilitation, and reporting on receipts/disbursements from the start of the proceeding. I filed the Second Status Report on December 27, 2021. The Second Status Report provided a semiannual accounting and an update on estate assets and liabilities. I filed a Third Status Report on July 6, 2022. The Third Status report provided a similar accounting and update (through May 31, 2022) while also advising as to the engagement of vendor (VCM) to provide third-party administrator services. I filed the Fourth Status Report on February 8, 2023. The Fourth Statute report again include an accounting and update (through December 31, 2022) as well as a report regarding the Rehabilitator's analysis of the potential for an increased initial distribution percentage and conversion of this proceeding to liquidation. All four Status Reports have been posted on the Department of Financial Regulation website (www.dfr.vermont.gov/epix) where the public may also access the Commissioner's petition (including the Plan of Rehabilitation), the Rehabilitation Order, and a Q&A document.

5. Semiannual Accounting & Opinion Regarding Reorganization. The insurance laws require that, after an order of rehabilitation has been entered, a rehabilitator provide semiannual accountings to the supervising court and that these accountings shall include a report of the rehabilitator's opinion as to the likelihood that a plan of reorganization will be filed. See 8 V.S.A. § 7052(b). In accordance with the receivership statutes, a report identifying all receipts and disbursements from the Company's accounts during the period December 31, 2022 to July 31, 2023 is attached as Exhibit A.[1] All of the disbursements reported in Exhibit A were

[1] The Rehabilitator's First and Second Status Reports included exhibits setting forth all receipts and disbursements from inception of the proceeding to the specified reporting date. The Rehabilitator's Third Status Report noted that this cumulative reporting was repetitious and becoming unwieldy. For the Third Status Report, therefore, the Rehabilitator reported only receipts/disbursement for the current period (i.e. since the last report). That practice will continue going forward.

approved by the Rehabilitator and are consistent with the Rehabilitation Order and Plan of Rehabilitation. With regard to the likelihood of reorganization, the Rehabilitator notes that EPIX transitioned all of its coverage to another carrier prior to insolvency and was operating in voluntary runoff prior to rehabilitation. The Rehabilitator is therefore of the opinion that there is no going concern that might be reorganized and that there is minimal likelihood that such a plan will be filed. The Rehabilitator continues to believe that, while it will ultimately be necessary to convert this proceeding to a liquidation, the interests of policyholders, creditors, and the public generally are best served at this time by continuing runoff of the Company's affairs in rehabilitation. See, infra, ¶ 16.

6. Balance Sheet. A simplified balance sheet reflecting the Company's financial condition as of July 31, 2023 is presented below in Table 1.

**Table 1 – Simplified EPIX Balance Sheet as of July 31, 2023**

| | | |
|---|---|---|
| **ASSETS** | | |
| Cash & Cash Equivalents | $ | 1,435,046 |
| Invested Assets | | 4,381,323 |
| Reinsurance Receivable | | -- |
| Credit for Distributions Made | | 4,242,490 |
| Total Assets | $ | 10,078,859 |
| **LIABILITIES** | | |
| Priority Class 1 | $ | 1,226,622 |
| Priority Class 3 (Best Estimate) | | 16,000,000 |
| Total Liabilities | $ | 17,226,622 |

7. Estate Assets. As of July 31, 2023, EPIX had liquid assets of $5.82 million consisting of the $1.44 million in cash and cash equivalents and $4.38 million of invested assets consisting of laddered US Treasury bonds reported at market value. Reinsurance recoveries may also constitute a material asset of the estate but, as these are contingent and unquantified, they are not reported as liquid assets. In addition to these liquid assets, it should also be noted that when calculating distributions in liquidation the EPIX estate will be entitled to credit for

approximately $4.26 million in reimbursements that have been paid to-date on policy level claims pursuant to the Plan of Rehabilitation. See, supra, ¶ 3.

8. Estate Liabilities. To avoid the creation of preferences, payments in rehabilitation must be made in a manner consistent with the statutory priority classes. See 8 V.S.A. §§ 7067 and 7081. With regard to priority class 1 (administrative expenses), the Petition for Order of Rehabilitation noted that the Company had accrued $0.9 million in administrative expenses and that, on a conservative basis, administrative costs to complete runoff and liquidation might total $1.9 million. See id., ¶ 6. The administrative expense reserve stood at $1,226,622 as of July 31, 2023, and the Rehabilitator believes that this is a reasonable and conservative estimate of the costs to wind up the Company's affairs.[2] Priority class 2 (administrative expenses of guaranty associations) will be empty in this proceeding because EPIX is a risk retention group and therefore barred by federal law from participating in the guaranty association system. See 15 U.S.C.A. § 3902(a)(2).

9. Priority class 3 (policyholder level claims) is expected to include loss, loss adjustment expenses, and a small amount of return premium. The Petition for Order of Rehabilitation noted that the Company's actuaries had provided low (optimistic), high (conservative), and central (select) estimates of claim exposures. The Rehabilitator initially relied on the high estimate -- $13.2 million in loss and loss adjustment expenses -- for purposes of rehabilitation planning. As the proceeding has continued, however, the Rehabilitator has

[2] Total administrative expenses were $350,404 in calendar year 2021 and $237,999 in calendar year 2022. This reduction in administrative expense is due, in significant part, to the transition to a vendor-based administrative model. See, infra, ¶ 11. Administrative expenses have further decreased in 2023 as the claim volume decreases and there are fewer matters requiring investigation, analysis, and participation in settlement discussions. See, infra, ¶¶ 13-14 (reporting as to "open" claims). The Rehabilitator is hopeful that these savings can be sustained through the remainder of the proceeding such that funds not needed for administrative expenses can be released to increase the eventual distribution on policyholder level claims in priority class 3.

sought to gain greater confidence and clarity as to the potential scope of the Company's claim liabilities in hopes of providing more specific guidance to creditors/claimants and to inform analysis as to whether the initial distribution percentage might be increased. See, infra, ¶¶ 13 (regarding claim status) and 15 (regarding the distribution percentage).

10. To evaluate potential policy level liabilities, the Rehabilitator has established a "claims roundtable" process in which the Rehabilitator's counsel, VCM representatives, and the Rehabilitator's claims consultant – Patrick McGrath of McGrath Associates Claims & Risk Services, Inc. – meet on a biweekly basis to discuss developments in individual claims and to evaluate the reserves for each claim in the Company's remaining inventory. The participants completed a top-to-bottom review of all defense and indemnity reserves in late-2022 and have continued to update their analysis on a monthly basis thereafter. The total of those reserves, plus defense and indemnity claims already received and processed in the Rehabilitation proceeding, is presented in Table 1 as the Rehabilitator's "best estimate" of priority class 3 liabilities. The Rehabilitator notes that this figure is approximately 21% greater than the high end of the pre-insolvency estimates generated by the Company's actuaries.[3]

11. Staffing & Administrative Services. In an effort to minimize the disruption resulting from insolvency, the Rehabilitator initially retained the EPIX claims staff to continue providing, as vendors, the services they had rendered as employees. An insolvent estate cannot offer long-term employment prospects, however, so it was anticipated that the Rehabilitator would ultimately need to engage consultants or other vendors to provide necessary services. This transition occurred in January of 2022 when the final EPIX claims staffer gave notice of

[3] The Rehabilitator notes that an increase in potential policy claims does not, in and of itself, indicate a greater degree of insolvency because the increased losses may be offset by increased reinsurance receivables. It is not possible, at this point, to calculate the balance of those factors with reasonable confidence.

resignation and the Rehabilitator engaged VCM (Vertical Claims Management, a division of Cannon Cochrane Management Services, Inc.) to provide certain third-party administrator services. The Rehabilitator believes that the transition to VCM's claims handling platform has been smooth and that, going forward, the relationship should yield stability and efficiency for the estate and the EPIX policyholders.

12. The Rehabilitator did not transfer all of the Company's historical claims, coverage, and other data to the VCM platform. The Rehabilitator did, however, maintain the legacy systems EPIX had used for these purposes to provide a backstop against transition-related complications. Maintenance of the systems had the additional benefit of permitting the Rehabilitator to support EPIX policyholders seeking confirmation of historical coverage, loss runs, or assistance with credentialling requests. The Rehabilitator maintained the systems through the life of their existing service contracts but, as there is no ongoing operational need for the systems, the expense of renewal could not be justified and the systems have been allowed to sunset. The data transitioned to the VCM platform should be sufficient for EPIX to assist with most loss run, coverage confirmation, and credentialling requests and instructions for submitting such requests are posted on the rehabilitation website. The Rehabilitator can no longer guarantee, however, that it will be possible to provide responsive information for all requests.

13. Status of Open Claims. When the Rehabilitation Order entered on February 26, 2021, EPIX had fifty-six open claims, forty-two of which involved active litigation. Following notice of this proceeding and outreach to the policyholders, the Rehabilitator has received reimbursement requests regarding forty-three claims that have produced the reimbursements described in the preceding paragraph. Forty-six of the original open claims have been resolved through judgment, settlement, closure of the underlying matter (e.g. a disciplinary proceeding),

or the issuance of coverage denial letters and the Rehabilitator has received one new claim (submitted under a "tail coverage") leaving twelve "open" claims as of the date of this report.[4]

14. Of the twelve remaining open claims, three have trials scheduled in the coming twelve months, two have trial dates scheduled more than twelve months in the future, and one has received a defense verdict and is awaiting appellate review. Discovery has been completed with regard to most of the other open claims which are therefore "on hold" pending a trial date. It remains difficult to project the pace of claim resolutions and thus the time that may be required to complete wind-down of the Company's affairs.

15. Potential for Increased Initial Distribution. The Fourth Status Report included analysis as to whether the Company's financial condition might permit an increase of the 40% initial distribution rate on policy-related obligations. The Rehabilitator concluded that a distribution of 66% (or more) on policy-level claims remained within the range of reasonably likely outcomes but that that increasing the prevailing distribution rate above the currently-approved 40% would leave an insufficient margin of error for adverse development, the potential for additional claims, and other unforeseen circumstances. The Rehabilitator has revisited that analysis using data as of July 31, 2023, and believes it would be imprudent to increase the initial distribution percentage and still retain an adequate margin of error.

16. Continuation of Rehabilitation. The Fourth Status Report included analysis as to the relative costs/benefits of liquidation to the relevant stakeholders (in comparison with continued rehabilitation) and concluded that the interests of policyholders, creditors, and the

[4] EPIX wrote "claims made" policies which typically provide coverage for claims reported during the coverage period. Since EPIX has no in-force policies, there is minimal opportunity for additional claims to be made. Some policies, however, included "tail coverage" – insurance for claims made subsequent to the coverage period regarding care rendered during a specified period – that cannot be cancelled or terminated. (The premium is fully earned when the policy is issued.) The universe of potential policy-level claims is not fixed, therefore, and the potential remains for claims to be submitted until all EPIX liabilities are cut off in a liquidation proceeding. See, infra, ¶ 16.

public generally are best served by continuing to run-off the Company in rehabilitation. The Rehabilitator has conducted fresh analysis and finds that the relevant factors continue to weigh in favor of continued rehabilitation. The Rehabilitator does anticipate however, that this balance is likely to change in the coming months as discovery continues to wind down in the underlying claims (see, supra, ¶ 14) such that the relative importance of promptly funding defense expenses is diminished. The Rehabilitator therefore anticipates filing a petition for liquidation in early 2024.

17. Next Steps. In the coming months, the Rehabilitator will continue to work with policyholders to ensure that the Rehabilitator remains informed of and involved in the management of open claims with a view towards resolving them in a prompt and efficient manner. The Rehabilitator proposes to make his next report and accounting in January of 2024 when data as of December 31, 2023, is available. See 8 V.S.A. § 7052(b) (rehabilitators to file semiannual accountings).

J. David Leslie

August 18, 2023

Subscribed and sworn before me this 18th day of August, 2023.

Notary Public Nicholas Magnani
My commission expires: 9-29-2028

NICHOLAS R. MAGNANI
Notary Public
Commonwealth of Massachusetts
My Commission Expires September 29, 2028

**EXHIBIT A**

**EPIX Rehabilitation Accounting**

Receipts and Disbursements – January 1, 2023 through July 31, 2023

| Date | Payee/Payor | Description | Disbursements | Receipts |
|---|---|---|---|---|
| 01/05/23 | VCM Claims Escrow | LAE (40% Initial Distribution) | 33,346.61 | |
| 01/10/23 | M&T Bank | Bank Fees | 0.38 | |
| 01/10/23 | VCM, LLC | TPA Fees | 11,100.00 | |
| 01/10/23 | Kollath & Associates CPA LLC | Accounting & Mgmt. Services | 1,654.59 | |
| 01/10/23 | McGrath Assoc. Claims & Risk Servs | Administrative Expense | 500.00 | |
| 01/23/23 | Verrill & Dana LLP | Administrative Expense | 3,678.00 | |
| 01/24/23 | Kollath & Associates CPA LLC | Accounting & Mgmt. Services | 422.24 | |
| 01/31/23 | M&T Bank | Interest Earned | | 665.58 |
| 01/31/23 | Kollath & Associates CPA LLC | Accounting & Mgmt. Services | 422.26 | |
| 01/31/23 | Markoff Law LLC | Deductible Recovery Expense | 3,000.00 | |
| 02/06/23 | Kollath & Associates CPA LLC | Accounting & Mgmt. Services | 1,426.88 | |
| 02/06/23 | McGrath Assoc. Claims & Risk Servs | Administrative Expense | 825.00 | |
| 02/06/23 | VCM Claims Escrow | LAE (40% Initial Distribution) | 14,403.31 | |
| 02/08/23 | M&T Bank | Bank Fees | 0.19 | |
| 02/09/23 | VCM Claims Escrow | Loss (40% Initial Distribution) | 120,000.00 | |
| 02/14/23 | Verrill & Dana LLP | Administrative Expense | 8,784.00 | |
| 02/15/23 | HCutt, LLC | IT Services/Licenses | 1,615.00 | |
| 02/15/23 | Kollath & Associates CPA LLC | Accounting & Mgmt. Services | 422.24 | |
| 02/28/23 | M&T Bank | Interest Earned | | 17,036.38 |
| 03/07/23 | VCM Claims Escrow | LAE (40% Initial Distribution) | 31,051.17 | |
| 03/08/23 | M&T Bank | Bank Fees | 0.38 | |
| 03/09/23 | HCutt, LLC | IT Services/Licenses | 807.50 | |
| 03/09/23 | Kollath & Associates CPA LLC | Accounting & Mgmt. Services | 422.26 | |
| 03/22/23 | Kollath & Associates CPA LLC | Accounting & Mgmt. Services | 422.24 | |
| 03/22/23 | Verrill & Dana LLP | Administrative Expense | 4,127.00 | |
| 03/31/23 | M&T Bank | Interest Earned | | 2,535.17 |
| 04/03/23 | Kollath & Associates CPA LLC | Accounting & Mgmt. Services | 422.26 | |
| 04/04/23 | ECHO | Deductible Recovery | | 15,000.00 |
| 04/06/23 | Kollath & Associates CPA LLC | Accounting & Mgmt. Services | 756.51 | |
| 04/06/23 | McGrath Assoc. Claims & Risk Servs | Administrative Expense | 925.00 | |
| 04/07/23 | VCM Claims Escrow | LAE (40% Initial Distribution) | 15,344.45 | |
| 04/10/23 | M&T Bank | Bank Fees | 0.19 | |
| 04/12/23 | VCM Claims Escrow | Loss (40% Initial Distribution) | 30,000.00 | |
| 04/19/23 | Verrill & Dana LLP | Administrative Expense | 3,783.00 | |
| 04/20/23 | Kollath & Associates CPA LLC | Accounting & Mgmt. Services | 422.24 | |
| 04/21/23 | VCM, LLC | TPA Fees | 11,100.00 | |
| 04/25/23 | HCutt, LLC | IT Services/Licenses | 777.06 | |
| 04/30/23 | M&T Bank | Interest Earned | | 1,889.33 |

| Date | Payee/Payor | Description | Disbursements | Receipts |
|---|---|---|---|---|
| 05/03/23 | VCM Claims Escrow | Loss (40% Initial Distribution) | 400,000.00 | |
| 05/05/23 | HCutt, LLC | IT Services/Licenses | 807.50 | |
| 05/05/23 | Kollath & Associates CPA LLC | Accounting & Mgmt. Services | 755.31 | |
| 05/05/23 | McGrath Assoc. Claims & Risk Servs | Administrative Expense | 350.00 | |
| 05/05/23 | VCM Claims Escrow | LAE (40% Initial Distribution) | 27,973.36 | |
| 05/08/23 | M&T Bank | Bank Fees | 0.38 | |
| 05/26/23 | Verrill & Dana LLP | Administrative Expense | 2,997.00 | |
| 05/30/23 | Kollath & Associates CPA LLC | Accounting & Mgmt. Services | 844.49 | |
| 05/31/23 | M&T Bank | Interest Earned | | 2,026.92 |
| 06/06/23 | Kollath & Associates CPA LLC | Accounting & Mgmt. Services | 1,635.89 | |
| 06/06/23 | VCM Claims Escrow | LAE (40% Initial Distribution) | 25,370.07 | |
| 06/08/23 | M&T Bank | Bank Fees | 0.38 | |
| 06/12/23 | HCutt, LLC | IT Services/Licenses | 1,615.00 | |
| 06/20/23 | McGrath Assoc. Claims & Risk Servs | Administrative Expense | 287.50 | |
| 06/21/23 | VCM Claims Escrow | Loss (40% Initial Distribution) | 400,000.00 | |
| 06/22/23 | Kollath & Associates CPA LLC | Accounting & Mgmt. Services | 422.25 | |
| 06/22/23 | Verrill & Dana LLP | Administrative Expense | 713.50 | |
| 06/30/23 | M&T Bank | Interest Earned | | 1,689.06 |
| 07/05/23 | Kollath & Associates CPA LLC | Accounting & Mgmt. Services | 422.25 | |
| 07/07/23 | HCutt, LLC | IT Services/Licenses | 807.50 | |
| 07/07/23 | Kollath & Associates CPA LLC | Accounting & Mgmt. Services | 763.31 | |
| 07/07/23 | VCM Claims Escrow | LAE (40% Initial Distribution) | 7,746.26 | |
| 07/10/23 | VCM Claims Escrow | Loss (40% Initial Distribution) | 60,000.00 | |
| 07/11/23 | M&T Bank | Bank Fees | 0.38 | |
| 07/12/23 | Markoff Law LLC | Deductible Recovery Expense | 3,000.00 | |
| 07/12/23 | McGrath Assoc. Claims & Risk Servs | Administrative Expense | 212.50 | |
| 07/13/23 | ECHO | Deductible Recovery | | 10,000.00 |
| 07/17/23 | Kollath & Associates CPA LLC | Accounting & Mgmt. Services | 422.25 | |
| 07/28/23 | VCM, LLC | TPA Fees | 11,100.00 | |
| 07/31/23 | M&T Bank | Interest Earned | | 1,124.61 |
| | | **Subtotal (Current Period)** | 1,250,209.04 | 51,967.05 |
| | | Prior Periods (Inception – December 31, 2022) | 3,711,758.55[5] | 143,234.25 |
| | | **TOTAL** | **$ 4,961,967.59** | **$ 195,201.30** |

Estate Disbursements (Inception to July 31, 2023)

| Priority Class | Disbursements |
|---|---|
| Priority Class 1 (Administrative Expense) | $ 673,378 |
| Priority Class 3 (Policy-Related Claims) | 4,262,490 |
| Other (Improper Garnishments) | 46,100 |
| **TOTAL** | $ 4,961,968 |

[5] This figure reflects a $807.50 adjustment from the previously reported figure due to voiding of an erroneous accounting entry for IT services.