

EPIX Rehabilitation -- Questions & Answers

March 2, 2021

Emergency Physicians Insurance Exchange Risk Retention Group (“EPIX” or the “Company”) was placed in rehabilitation by an *Order for Rehabilitation of Emergency Physicians Insurance Risk Retention Group* (“Rehabilitation Order”) entered by the Vermont Superior Court for Washington County (“Court”) on February 26, 2021. The Rehabilitation Order appointed Michael S. Pieciak, Commissioner of the Vermont Department of Financial Regulation (“Department”), as Rehabilitator of EPIX. The Rehabilitator has taken possession and control of the Company and, under supervision of the Court, will implement the Plan of Rehabilitation approved in the Rehabilitation Order. It is anticipated that, after runoff in rehabilitation, the proceeding will be converted to a liquidation to permit final distribution to the Company’s creditors and dissolution of EPIX.

Why did the Commissioner seek the Rehabilitation Order?

The Company re-domesticated to Vermont in 2015 and, since that time, the Department has monitored its financial condition. Written premium dropped in recent years and, by late-2019 it became apparent that EPIX was experiencing a surge in high severity claims which adversely affected its surplus. The Company cancelled all in-force business effective September 1, 2020, and entered voluntary runoff. Following review of the Company’s most recent financial statements, a report from its consulting actuary concerning unpaid claim liabilities, and discussion with management, the Commissioner concluded that EPIX was insolvent and that continued transaction of business would be hazardous financially to policyholders, claimants, and the Company’s creditors. The Commissioner consulted with the Board of Directors which consented to rehabilitation.

What is the Plan of Rehabilitation?

After determining that EPIX was insolvent, the Commissioner considered the available regulatory options including rehabilitation and liquidation. The Commissioner concluded that, as an initial step, rehabilitation would be preferable because it would permit continuation of the Company’s runoff without placing creditors in a worse position than they would face in liquidation. See 8 Vt. Stat. Ann. § 7081 (all claims in a priority class must be paid in full before any claims are paid in the subsequent priority class).

The Plan of Rehabilitation is therefore designed to minimize disruption to creditors while respecting the order of creditor priorities set by statute. Specifically, the Plan of Rehabilitation contemplates that administrative expenses (priority class 1) will be paid in full in the ordinary course of business. Creditors with claims in the next relevant priority class (priority class 3 for policy-related claims) will receive prompt payment equivalent to 40% of their claim (the “Initial Distribution Rate”) with the remaining payment deferred to avoid creating preferential transfers (payments to policyholders that would need to be clawed-back in a liquidation proceeding if insufficient funds were available to pay other policy-related claims). The Rehabilitator will defer payment of liabilities that would fall in liquidation priority classes 4-10 because it does not appear that the Company will have sufficient assets to make any distribution on such claims in liquidation. At the end of the runoff, the Rehabilitator will likely request that the Court convert the proceeding to a liquidation in order to fix the Company’s obligations, facilitate a final distribution, and permit the dissolution of EPIX.

How does the rehabilitation affect policyholders?

Due to its insolvency, EPIX is unable to continue providing its policyholders with a defense and cannot fully fund indemnity payments. Policyholders will, therefore, need to immediately assume direct responsibility for the defense of claims and paying settlements/judgments arising out of those claims.

Policyholders are encouraged, however, to work closely with EPIX claims staff who will remain available (at the Company's expense) to coordinate the defense and adjustment of claims. This work will include accepting defense and indemnity invoices from policyholders so that they can be promptly reimbursed at the 40% Initial Distribution Rate. (Legal bills may be submitted to Robin Freed at claimsinvoices@epixrrg.com, 608/416-1038.)

As the runoff of EPIX progresses, it will become possible to better estimate the amount the Company will ultimately be able to pay on priority class 3 claims. (If loss experience develops in conformity with expectations, the ultimate distribution percentage could be significantly higher than 40%.) At that point, the Commissioner will request authority from the Court to either increase the Initial Distribution Percentage or to convert the proceeding to a liquidation to permit an additional (final) distribution.

How does the rehabilitation affect other creditors?

The insurer insolvency statutes require that costs and expenses of administering the EPIX estate (priority class 1) and policy-related claims (priority class 3) be satisfied in full before the Company makes payment on any other claims. It is unlikely that EPIX will be able to pay all policy-related claims so the Rehabilitator will defer making such payments.

What assets are available to pay claims?

EPIX is a risk retention group rather than a traditional insurer which means, among other things, that it is barred by federal law from participating in the guaranty fund system. The Company's assets – principally cash, investments, and reinsurance receivable – are therefore the sole source of recovery for estate creditors. (Please note, reinsurance is a general asset of the estate and is not available to pay individual claimants. In other words, a reinsurance recovery is not payable to the insured whose claim generated the reinsurance recovery)

How long will the rehabilitation take?

The Rehabilitator will work with EPIX claims staff, policyholders, and other creditors to complete the runoff of Company obligations as expeditiously as possible. There is no definite timeline, however, as the pace of runoff will largely depend on the speed with which claims against EPIX policyholders are resolved either through settlement or litigation. When it becomes possible, the Rehabilitator will include timeframe estimates in his regular updates to the Court which will be posted on the rehabilitation website.

How can I learn more about the rehabilitation?

The Rehabilitator will maintain the Company's website (www.epixrrg.com) for a limited period to provide information regarding the Company's status and the conduct of the rehabilitation. The Rehabilitator has also established a rehabilitation website (www.dfr.vermont.gov/epix) which will remain active for the entire proceeding. Key rehabilitation documents, including the Rehabilitator's semiannual reports to the Court, will be posted on the rehabilitation website.

Who should I contact about questions?

Policyholders with questions about the transition and handling of their individual claims should contact Sarah Scheib at 608/416-1013 or sscheib@epixrrg.com and credentialing requests may be submitted to Robin Freed at credentialing@epixrrg.com. General questions regarding the Company's condition and the rehabilitation should be directed to counsel for the Rehabilitator, Stuart Leslie, who can be reached at 617/951-1130 or sleslie@rackemann.com.