

STATE OF VERMONT

SUPERIOR COURT
WASHINGTON UNIT

_____)	
COMMISSIONER OF THE)	
DEPARTMENT OF FINANCIAL)	
REGULATION)	
PLAINTIFF,)	CIVIL DIVISION
)	DOCKET NO. 21-cv-348 Wncv
v.)	
)	
EMERGENCY PHYSICIANS INSURANCE)	
EXCHANGE RISK RETENTION GROUP)	
RESPONDENT.)	
_____)	

**LIQUIDATOR'S FIRST STATUS REPORT, ANNUAL ACCOUNTING,
AND FIRST REPORT OF CLAIMS**

I, J. David Leslie, Special Deputy Liquidator, hereby submit this status report concerning the liquidation of Emergency Physicians Insurance Exchange Risk Retention Group (“EPIX” or the “Company”), an annual accounting as of August 31, 2024 (attached as Exhibit A), and the Liquidator’s First Report of Claims (attached as Exhibit B).

1. EPIX was placed in rehabilitation by the Court’s Order for Rehabilitation of Emergency Physicians Insurance Exchange Risk Retention Group (“Rehabilitation Order”) entered on February 26, 2021. The Rehabilitation Order appointed the Commissioner of the Department of Financial Regulation (“Commissioner”) as Rehabilitator (“Rehabilitator”) and authorized him to implement a plan of rehabilitation (“Rehabilitation Plan”). The key to the Rehabilitation Plan was a partial reimbursement of policy-level claims, including claims for defense and indemnity. See 8 V.S.A. § 7081 (priority classes applicable in liquidation). The initial rate was set at 40% with the 60% balance being deferred. Rehabilitation Plan ¶ 8.

2. The Company remained in rehabilitation for three years because the flexibility afforded by the rehabilitation process and ability to pay policyholder-level obligations promptly

(at the 40% initial distribution rate) facilitated run-off of its operations. Rehabilitation also minimized the disruption to policyholders and overall estate liabilities (maintaining stability in claim defense and adjustment likely reduced the total defense and indemnity costs). By early 2024, however, the benefits of continued rehabilitation had diminished (e.g. fewer open claims means fewer creditors benefiting from the ability to make prompt payments) and that the benefits of liquidation (e.g. the ability to secure recovery of reinsurance receivable and thus an increased distribution percentage) began to outweigh them such that the Commissioner recommended converting the proceeding from rehabilitation to liquidation.

3. On February 1, 2024, the Commissioner filed a Petition for Order of Liquidation. On February 6, 2024, the Court entered its Order of Liquidation (“Liquidation Order”) that, among other things, appointed the Commissioner as Liquidator (“Liquidator”), authorized him to appoint a special deputy liquidator, approved the Plan of Liquidation, and ordered that the Liquidator provide creditors and others with notice of the Liquidation Order and a claim filing deadline. See Order of Liquidation ¶¶ 1, 5, 6, and 7. The Liquidator appointed me to serve as Special Deputy Liquidator.

Status Report

4. The Claim Filing Deadline. The Liquidation Order and governing statutes require that the Liquidator set a claim filing deadline between six and eighteen months from entry of the Liquidation Order. See Liquidation Order, ¶ 6.B; 8 V.S.A. § 7061(b). In setting a claim filing deadline within those limits, the Liquidator sought to establish a balance between the interests of creditors with known claims (who may benefit from an earlier deadline, a shorter proceeding, and the opportunity to receive a distribution earlier) and those with unknown claims (who may benefit from a later deadline, a longer proceeding, and an increased opportunity to discover and

file claims). Here, the Liquidator notes that EPIX entered voluntary run-off in September 2020 and all in-force policies were cancelled as of September 1, 2020. EPIX was placed into rehabilitation by the Court on February 26, 2021, and the Company had not had any in-force coverage for more than three years when the Liquidation Order entered. Further, since EPIX wrote claims made coverage with very little tail coverage, the universe of potential claims is reasonably well understood. The Liquidator therefore determined that a short claim filing period would be appropriate and established a claim filing deadline of August 30, 2024 – approximately six-and-one-half months after entry of the Liquidation Order.

5. Provision of Notice. Pursuant to ¶ 6.A of the Liquidation Order, I caused notice of the Liquidation Order and August 30, 2024, claim filing deadline to be sent by first class mail, along with a blank proof of claim form and instructions for its submission, to the following:

- The chief insurance regulators and taxing authorities in each of the seventeen jurisdictions in which EPIX had business contacts;
- Seventy-four entities insured by EPIX from its formation through its entry into runoff (September 2020) for which the Company had address information;
- Forty-five claimants’ attorneys and twenty-three defense counsel involved with claims shown as “open” in EPIX’s books and records when the Rehabilitation Order entered (February 2021);
- 216 other individuals and entities known or reasonably expected to have claims against EPIX including vendors and former officers/employees.

6. Pursuant to ¶ 6.a.(iii) of the Liquidation Order, I caused notice of the Liquidation Order and claim filing deadline to be published in the Burlington Free Press on March 24, 2024, Sacramento Bee on March 24, 2024, and Wisconsin Daily Journal on March 26, 2024.

7. In addition to traditional publication notice, a liquidation website was created (<https://dfr.vermont.gov/epix>) announcing entry of the Liquidation Order, advising of the claim filing deadline, and permitting the download of the proof of claim form, filing instructions, and related materials. See id., ¶ 6.a.(iv). This website will be maintained throughout the liquidation process.

8. Receipt of Proofs of Claim. As of September 24, 2024, the Liquidator had received and acknowledged a total of 39 completed proofs of claim (“POCs”). (Incomplete proofs of claim were returned to their senders with instructions for resubmission.) The Liquidator may consider any “claim filed late” if doing so “does not prejudice the orderly administration of the estate.” 8 V.S.A. § 7074(d). Accordingly, the Liquidator has deemed all 39 of the POCs received by September 24, 2024, to be timely filed. Considering the early stage of this proceeding, the Liquidator believes it will remain possible to accept, acknowledge, and investigate late-filed claims for several more months. See id.

9. A POC may present a single claim (e.g. recovery for a loss resulting from a single incident) or multiple claims (e.g. the POC form encloses a schedule listing separate incidents). Further, some claims include both current obligations (e.g. defense expenses incurred to-date) as well as claims for future obligations (e.g. the possibility of indemnity and future defense expenses). Accordingly, the Liquidator has subdivided a number of POCs, assigning separate control numbers to each claim presented in a POC. For example, POC no. 3 has been subdivided into six subclaims assigned POC nos. 3.01 through 3.06. Counted in this manner, the Liquidator has received a total of 58 claims.

10. Because the insurance statutes permit third parties to file claims directly against the estate and because multiple entities may have a financial interest in a claim, a single incident

may give rise to numerous related claims that may seek overlapping recovery (e.g. a tort claimant asserting the insured's liability, another insurer asserting rights of subrogation/contribution, a policyholder seeking indemnity and post-liquidation defense expenses, and defense counsel seeks payment of pre-liquidation defense expenses.) This means that raw POC and claim counts are not a reliable metric for evaluating estate exposure or the amount of work remaining to crystallize EPIX's obligations and close the proceeding. The Liquidator has therefore attempted to group POCs by incident. As of September 24, 2024, this analysis showed 34 incidents for which at least one POC has been filed.¹

11. Retention of Program Manager. Prior to liquidation, EPIX engaged Kollath & Associates, CPA LLC ("Kollath"), to provide certain administrative services including accounting, reinsurance reporting, and the preparation of tax returns. The Rehabilitator concluded that it would be beneficial and cost-effective to continue this relationship. The Liquidator has made the same finding and Kollath has continued to provide these services to EPIX in liquidation.

12. Retention of Third-Party Administrator. To provide policyholders with support and to maintain as much stability as possible, the Rehabilitator arranged for two individual who had formed the Company's pre-rehabilitation claims staff to continue providing such services as vendors.² Using the same structure, the Rehabilitator also retained the Company's former office manager to provide IT, loss run/credentialing assistance, and records support. Because EPIX is insolvent, however, it was unable to offer the same stability and long-term employment

¹ In contrast, the Liquidator notes that there are twenty-two incidents that were "open" at some point during the rehabilitation process – including fifteen on which a 40% partial payment was made during rehabilitation – for which no POC has yet been submitted. If creditors with claims relating to such incidents do not file POCs it will require revised analysis of the estate's financial condition and could result in either increases or decreases to the projected distribution percentage.

² This retention was accomplished by entering to agreements with Kollath which retained the staff as co-employer together with a professional employer organization.

prospects as an insurer operating in the ordinary course of business and both claims handlers resigned before the end of 2021.

13. In January of 2022, the Rehabilitator engaged VCM (Vertical Claims Management, a division of Cannon Cochrane Management Services, Inc.) to provide certain third-party administrative (“TPA”) services. The transition to the VCM claims handling platform and process was completed in early 2022. VCM provided valuable assistance during the remainder of the rehabilitation and the Liquidator has found that it would be beneficial to continue the relationship in liquidation. VCM was acquired by Intercare Insurance Services (“Intercare”) effective April 1, 2024, with no disruption to the services provided to the Company. EPIX claims continue to be administered by the same team and the Liquidator continues to believe that maintenance of the TPA relationship increases administrative efficiency and is in the best interests of policyholders, creditors, and the EPIX estate generally.

14. Coordination with Reinsurer. Reinsurance recoveries are likely to form a material asset of the EPIX estate. The Rehabilitator therefore kept the Company’s reinsurers apprised of claim development throughout the rehabilitation process (communicating primarily through the appointed intermediary) and the Liquidator has continued that effort. The Liquidator has also advised the reinsurers of the relevant claim recommendations proposed in the First Report of Claims and will continue to work closely with them and the intermediary.

Annual Accounting

15. The Liquidator is required to file an annual accounting with the Court reporting the assets and liabilities of EPIX and all funds received or disbursed during the current period. See 8 V.S.A. § 7057(d); Liquidation Order ¶ 4. A report showing all EPIX funds received or disbursed between entry of the Liquidation Order and August 31, 2024, is attached as Exhibit A.

16. Balance Sheet. A simplified balance sheet reflecting EPIX’s financial condition as of August 31, 2024, is presented below in Table 1.

Table 1 – Simplified EPIX Balance Sheet as of August 31, 2024

ASSETS	
Cash & Cash Equivalents	\$ 5,471,761
Invested Assets	992,520
Accrued Income	32,236
Reinsurance Recoverable	2,600,000
Credit for Distributions in Rehabilitation ³	3,896,597
Total Assets	\$ 12,993,113
LIABILITIES	
Priority Class 1	
Administrative Expense Reserve	\$ 1,039,343
Priority Class 3	
Allowed or Reported	\$ 5,226,058
Determined but not yet Reported	2,399,992
Reserved	7,105,001
Subtotal (Class 3)	\$ 14,731,051
Total Liabilities	\$ 15,770,394

17. Assets. The Company’s cash, cash equivalents, and other liquid assets were marshalled and consolidated in a Vermont banking institution during the rehabilitation process and have since been invested in laddered U.S. Treasury bonds. The Company’s investments are reported at market value together with their accrued income. With regard to reinsurance recoverable, the \$2.6 million figure reflects the Liquidator’s estimate of the amount that may be recoverable on the claims that have been investigated and determined. Because the Liquidator has prioritized the review of such claims, it is not anticipated that this figure will increase materially as the liquidation process continues.

³ The total amount of allowed/reported, determined, and reserved priority class 3 claims is set forth as an estate liability. Many of these claims have already received 40% payments pursuant to the Rehabilitation Plan (see, supra, ¶¶ 1 and 2) for which the EPIX estate is entitled to take credit in making future distributions. It is therefore appropriate to report these credits as assets to ensure that asset and liabilities are reported on a consistent basis in the balance sheet.

18. Liabilities. Vermont law requires that payments on claims be made in accordance with the statutorily established priorities and that all claims in a class be paid in full (or adequate reserves established for such payment) before claims in subsequent classes receive any distribution. 8 V.S.A. § 7081. Accordingly, in Table 1 the Liquidator presents the Company's estimated liabilities in terms of priority classification rather than the standard format applicable to an insurer operating as a going concern.

a. *Priority Class 1 (Administrative Expense)* – In the Petition for Order of Rehabilitation, the Commissioner estimated based on Company accruals and a factor for conservatism that total administrative expense to complete the proceeding might total \$1.9 million. The Rehabilitator and Liquidator have since drawn this reserve down on a dollar-for-dollar basis as administrative expenses have been paid and it now stands at the \$1.04 million figure noted in Table 1.

b. *Priority Class 3 (Claims Arising under Policies)* -- The \$14.73 million figure presented in Table 1 reflects the Liquidator's "best estimate" of the amount in which policy-related claims may ultimately be valued if known claims are filed.⁴ The estimate is broken out into three elements: the claims that have been finally determined and reported to the Court (\$5.16 million), the claims for which the Liquidator has issued an notice of determination but for which the determination has not yet become final (\$2.46 million), and the Liquidator's "best estimate" projection of the amount in which additional policy-related claims might be allowed (\$7.11 million).⁵

⁴ The "best estimate" for an individual claim reflects the Liquidator's judgment as to the most likely point within the expected range of potential exposure for that claim. The "best estimate" for the estate as a whole is the sum of the "best estimates" for all known policy-related obligations.

⁵ To permit reconciliation between Table 1 and Exhibit B (the Liquidator's First Report of Claims), figures for reported, determined, and reserved claims are "as of" September 20, 2024,

c. *Priority Classes 4-10.* The Liquidator anticipates that it will not be possible to make full payment on claims falling in priority class 3. Accordingly, no payment will be possible on claims falling in priority classes 4-10. See 8 V.S.A. § 7081 (“Every claim in each class shall be paid in full or adequate funds retained for such payment before the members of the next class receive any payment.”) The Liquidator has therefore deferred making determinations as to the amount, if any, in which claims in priority classes 4-10 might be allowed and will issue determinations solely as to priority. See Plan of Liquidation, ¶ 2.b. Because the value of such claims has not been investigated and does not affect distributions that might be made from the Company’s estate, the Liquidator makes no estimate or report regarding the possible value of claims falling in priority classes 4-10.

19. Proposed Interim Distribution. The Rehabilitation Order directed the Rehabilitator to implement the Plan of Rehabilitation which included reimbursing policyholders for 40% of the costs of defense and indemnity for policyholder-level claims and other policy-related obligations. The Rehabilitator regularly evaluated the potential for an increase in this percentage and presented his analysis to the Court. While the Rehabilitator did conclude that a distribution of 60% or more remained within the range of reasonably likely outcomes, he also found that the estate assets that had been marshalled to-date did not support an increased distribution percentage and that increasing the distribution rate above 40% would leave an insufficient margin of error for adverse development, the potential for additional claims, or other unforeseen circumstances. See, e.g., Rehabilitator’s Fourth Status Report (filed February 8, 2023), ¶ 14-15.

20. One of the principal reasons for converting this proceeding from a rehabilitation to liquidation was to permit EPIX to begin collecting reinsurance on allowed claims. The Petition for Liquidation anticipated that “[a]sset collection should... proceed quickly once claims are determined in liquidation”, that it should be “possible to immediately request authority for an interim distribution”, and that the request for an interim distribution would be “made for a rate substantially greater than the 40% currently approved in rehabilitation. *Id.*, ¶ 24. By his Motion for Interim Distribution on Allowed Priority Class 3 Claims filed herewith (“Interim Distribution Motion”), the Liquidator requests an interim distribution and proposes that it be made at a 55% rate which constitutes a material increase from the 40% called for under the Rehabilitation Plan. As discussed in the Interim Distribution Motion, the proposed 55% distribution reflects certain conservative assumptions and the Liquidator will continue to analyze whether it is reasonable and prudent to propose further increases as the liquidation process continues.

Liquidator’s First Report of Claims

21. Investigation and Determination of Claims. The Liquidator has prioritized investigation and determination of large claims that can be readily resolved (e.g. large claims that were valued during rehabilitation) as well as those where there is an ongoing defense. Through September 24, 2024, the Liquidator has completed investigation and issued a notice of determination (“NOD”) respecting 17 claims. “Within 60 days from the mailing of notice [of determination] the claimant may file objections with the liquidator” and “[i]f no such filing is made, the claimant may not further object to the determination.” See 8 V.S.A. § 7078(a).

22. Liquidator’s Report of Claims. The 60-day objection period has run or been waived with regard to 11 of the determined claims. The 11 finally determined claims are reported in the Liquidator’s First Report of Claims, attached as Exhibit B, together with the

Liquidator's recommendations. See 8 V.S.A. § 7082(a) ("As soon as practicable, the liquidator shall present to the Court a report of the claims against the insurer with recommendations.") By his Motion for Order Approving Liquidator's First Report of Claims (filed herewith), the Liquidator requests that the Court enter an order approving the First Report of Claims. See 8 V.S.A. § 7082(b) ("The court may approve, disapprove, or modify the report on claims [filed] by the liquidator.").

23. Next Steps. The Liquidator will continue to investigate and analyze the proofs of claims received and will then either pursue negotiated resolutions or issue notices of determination. In addition, if the Court approves the First Report of Claims, the Liquidator will also pursue such reinsurance recoveries as may be appropriate. Similarly, if the Court approves the Interim Distribution Motion, the Liquidator will make an interim distribution on allowed priority class 3 claims. The Liquidator proposes making his next report to the Court as of December 31, 2024.

Dated this 11th day of October, 2024,

Subscribed and sworn before me
this 11th day of October, 2024,

Ellen M. Harrington
Notary Public
My commission expires:

J. David Leslie
J. David Leslie
Special Deputy Liquidator

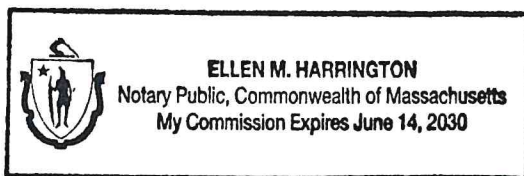


EXHIBIT A**EPIX Liquidation**Accounting of Receipts and Disbursements – February 6, 2024 through August 31, 2024

Date	Counterparty	Description	Receipts	Disbursements
02/08/24	M&T Bank	Bank Fees		0.90
02/13/24	Verrill & Dana LLP	Administrative Expense		11,554.50
02/14/24	HCutt, LLC	IT Services/Licenses		807.50
02/14/24	Kollath & Associates CPA LLC	Accounting & Mgmt. Services		1,450.67
02/14/24	Markoff Law LLC	Deductible Recovery Expense		7,000.00
02/14/24	VCM, LLC	TPA Fees		11,100.00
02/14/24	McGrath Assoc. Claims & Risk Serv.	Administrative Expense		2,087.50
02/22/24	Kollath & Associates CPA LLC	Accounting & Mgmt. Services		1,265.61
02/29/24	M&T Bank	Interest Received	100.20	
03/06/24	McGrath Assoc. Claims & Risk Serv.	Administrative Expense		687.50
03/08/24	ECHO	Deductible Recovery	5,000.00	
03/08/24	HCutt, LLC	IT Services/Licenses		807.50
03/14/24	ECHO	Deductible Recovery	5,000.00	
03/28/24	Verrill & Dana LLP	Administrative Expense		5,700.50
03/28/24	Kollath & Associates CPA LLC	Accounting & Mgmt. Services		1,616.81
03/31/24	M&T Bank	Interest Received	122.48	
04/01/24	M&T Bank	Interest Received	702.84	
04/04/24	Kollath & Associates CPA LLC	Accounting & Mgmt. Services		760.26
04/04/24	Intercare Holdings Ins. Services	TPA Fees		11,100.00
04/22/24	Verrill & Dana LLP	Administrative Expense		15,245.47
04/23/24	Kollath & Associates CPA LLC	Accounting & Mgmt. Services		421.87
04/24/24	ECHO	Deductible Recovery	5,000.00	
05/07/24	McGrath Assoc. Claims & Risk Serv.	Administrative Expense		837.50
05/22/24	Verrill & Dana LLP	Administrative Expense		10,217.00
05/23/24	Kollath & Associates CPA LLC	Accounting & Mgmt. Services		2,127.31
05/28/24	Markoff Law LLC	Deductible Recovery Expense		3,000.00
05/28/24	Kollath & Associates CPA LLC	Accounting & Mgmt. Services		843.74
05/30/24	Guy Carpenter & Company, LLC	Asset Recovery	5,892.53	
05/31/24	M&T Bank	Interest Received	762.87	
05/31/24	M&T Bank	Bank Fees		5.00
06/03/24	ECHO	Deductible Recovery	5,000.00	
06/07/24	HCutt, LLC	IT Services/Licenses		2,422.50
06/07/24	Kollath & Associates CPA LLC	Accounting & Mgmt. Services		753.60
06/13/24	Kollath & Associates CPA LLC	Accounting & Mgmt. Services		421.87

06/18/24	Verrill & Dana LLP	Administrative Expense		6,228.00
06/20/24	ECHO	Deductible Recovery	5,000.00	
06/25/24	Kollath & Associates CPA LLC	Accounting & Mgmt. Services		421.87
06/30/24	M&T Bank	Interest Received	754.76	
07/01/24	Kollath & Associates CPA LLC	Accounting & Mgmt. Services		11,521.87
07/09/24	Kollath & Associates CPA LLC	Accounting & Mgmt. Services		780.25
07/09/24	HCutt, LLC	IT Services/Licenses		807.50
07/18/24	ECHO	Deductible Recovery	5,000.00	
07/18/24	McGrath Assoc. Claims & Risk Serv.	Administrative Expense		787.50
07/23/24	ECHO	Deductible Recovery	5,000.00	
07/23/24	Verrill & Dana LLP	Administrative Expense		1,677.00
07/29/24	Kollath & Associates CPA LLC	Accounting & Mgmt. Services		843.74
07/31/24	M&T Bank	Interest Received	799.62	
08/06/24	HCutt, LLC	IT Services/Licenses		807.50
08/06/24	Kollath & Associates CPA LLC	Accounting & Mgmt. Services		1,258.27
08/14/24	ECHO	Deductible Recovery	5,000.00	
08/14/24	Verrill & Dana LLP	Administrative Expense		9,783.00
08/15/24	Kollath & Associates CPA LLC	Accounting & Mgmt. Services		421.87
08/31/24	M&T Bank	Interest Received	824.66	
		Subtotal	49,959.96	127,573.48

EXHIBIT B

Liquidator's First Report of Claims for EPIX

October 11, 2024

Claims Recommended for Allowance in Priority Class 3

<u>POC No.</u>	<u>Claimant Name</u>	<u>Claimant Address</u>	<u>Priority Class</u>	<u>Amount Allowed</u>	<u>Distribution in Rehabilitation</u>
POC 001.01	Olympia Emergency Services	413 Lilly Rd NE, Olympia, WA, 98506	3	\$ 64,377.59	\$ 7,182.60
POC 008	Steven Luppold	850 Lawrence St, Unit 203, Lowell, MA, 01852	3	\$ 1,000,000.00	\$ 400,000.00
POC 009	Estate of Crusius	39 Sherman Hill Rd, Woodbury, CT, 06798	3	\$ 1,000,000.00	\$ 400,000.00
POC 011.01	Bluewater Emer. Partners, LLC	14 Maine St, Ste 306, Brunswick, ME, 04011	3	\$ 777,734.10	\$ 311,093.64
POC 011.02	Bluewater Emer. Partners, LLC	14 Maine St, Ste 306, Brunswick, ME, 04011	3	\$ 1,157,811.47	\$ 463,124.59
POC 011.03	Bluewater Emer. Partners, LLC	14 Maine St, Ste 306, Brunswick, ME, 04011	3	\$ 504,878.97	\$ 201,951.59
POC 027	Amanda Conforti	237 Sherwood Dr, Torrington, CT, 06790	3	\$ 500,000.00	\$ 200,000.00
POC 029	Joseph Felice, MD	6 Hillside Place, Highland, NY, 12528	3	\$ 21,255.62	\$ 1,477.66
POC 037	Jeremy Howard	P.O. Box 938, Harlan, KY, 40831	3	\$ 66,666.67	--
POC 038	Estate of Howard	P.O. Box 938, Harlan, KY, 40831	3	\$ 66,666.66	--
POC 039	Darby Lewis	P.O. Box 938, Harlan, KY, 40831	3	\$ 66,666.67	--

Recommended for Allowance in First Report of Claims \$ \$5,226,057.75 \$ 1,984,830.08