

MS.

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel.)
 L. TIM WAGNER,)
 DIRECTOR OF INSURANCE OF)
 THE STATE OF NEBRASKA,)
)
 Petitioner,)
)
 vs.)
)
 AMWEST SURETY INSURANCE)
 COMPANY,)
)
 Respondent.)

Case No. CI 01 2102

APPLICATION NO. 97

**(LIQUIDATOR'S APPLICATION TO
 APPROVE AGREEMENTS UNDER
 NEB. REV. STAT. §44-4821(1)(w) TO
 RETURN SPECIAL DEPOSITS AND
 PARTICIPATE IN GENERAL ASSET
 DISTRIBUTIONS)**

Ann M. Frohman, Liquidator (the "Liquidator") of Amwest Surety Insurance Company ("Amwest"), applies to the Court for an Order permitting the Liquidator to make agreements with insurance officials of states other than Nebraska pursuant to NEB. REV. STAT. §44-4821(1)(w) respecting amounts on deposit in such states:

1. Prior to its liquidation hereunder, and in order to permit it to conduct its insurance business in certain states other than Nebraska and political subdivisions thereof, Amwest made deposits of its funds with such states and political subdivisions pursuant to various state statutes for the benefit of all insureds or all insureds and creditors in such states or political subdivisions thereof.
2. The deposits in question appear to be "special deposits" under the Nebraska Insurers Supervision, Rehabilitation and Liquidation Act ("Liquidation Act"), NEB. REV. STAT. §44-4801 *et seq.*, particularly NEB. REV. STAT. §44-4803(20). Under that section, a special deposit claim is

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 Clerk, District Court
 Lancaster County, NE
 on JUL 24 2009

“any claim secured by a deposit made pursuant to statute for the security or benefit of a limited class or classes of persons” Pursuant to NEB. REV. STAT. §44-4803(12), “[a]ssets held in trust and on deposit for the security or benefit of all insureds or all insureds and creditors, in more than a single state, shall be treated as general assets.” Special deposit claims therefore consist of (i) claims, (ii) secured by deposits, (ii) made pursuant to statute, (iii) for the security or benefit of a limited class or classes of persons, (iv) in a single state.

3. The following states and political subdivisions within states hold (or have held) deposits which appear to be special deposits within the meaning of NEB. REV. STAT. §§44-4803(20) and (12): Arkansas, Delaware, Georgia, Louisiana, Massachusetts, New Hampshire, New Mexico, North Carolina, Oregon, South Carolina, and the following Texas counties: Travis, Nueces, Collin, Harris, Wichita, Tarrant, Montgomery, El Paso, and Brazoria. The State of Virginia previously held a deposit which appears to have been a special deposit. The Virginia insurance liquidation authorities have distributed said deposit to the persons and entities determined by them to hold valid claims against said deposit without any prior consultation with or participation by the Liquidator.

4. Attached hereto as Exhibit A and incorporated herein by reference is a listing of the amounts of Amwest’s special deposits in the various states and political subdivisions thereof holding the same, together with the amounts of approved Class 3 policyholder special deposit claims in such states or political subdivisions and Class 3 policyholder special deposit claims which the Liquidator anticipates will be finally approved, and an estimated percentage of such special deposit claims covered by the applicable special deposits.

5. Under NEB. REV. STAT. §44-4858(2):

The owners of special deposit claims against an insurer for which a liquidator is appointed in this or any other state shall be given priority against the special deposits in accordance with the statutes governing the creation and maintenance of the deposits. If there is a deficiency in any deposit so that the claims secured by it are not fully discharged from it, the claimants may share in the general assets, but the 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 from the special deposit.

6. General creditors are referred to in NEB. REV. STAT. §44-4842(4)¹, as Class 4 claimants. The term “general creditors” is not otherwise defined in the Liquidation Act.

7. There are not sufficient assets in Amwest’s insolvent estate to distribute any general assets to Amwest’s general creditors. All Amwest general assets will be exhausted prior to payment in full of Class 3 policyholder claimants, the next higher priority classification. No Class 3 policyholder claimant who is also a special deposit claimant will receive any distribution from Amwest’s general assets.

8. There is an apparent conflict between NEB. REV. STAT. §44-4858(2) and other provisions of the Liquidation Act. In particular, NEB. REV. STAT. §44-4842, entitled “Priority of Distribution” states, in pertinent part:

¹Included within Class 4 claims are the following:

(4) Class 4. Claims under nonassessable policies for unearned premium or other premium refunds and *claims of general creditors*, including claims of ceding and assuming insurers in their capacities as such.

NEB. REV. STAT. §44-4842(4) (emphasis added). The Liquidator is using the priority statute as it existed on June 7, 2001, the date of the Order of Liquidation, Declaration of Insolvency and Injunction entered in this case. Subsequently, the Nebraska Legislature amended the Liquidation Act, and the distribution priority of general creditors is now contained in NEB. REV. STAT. §44-4842 (5).

The priority of distribution of claims from the insurer's estate shall be in accordance with the order in which each class of claims is set forth in this section. *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. No subclasses shall be established within any class.*

(emphasis added). Approval of this Application would resolve that conflict.

9. The Liquidator currently estimates that the general asset distribution to Class 3 policyholder claimants will be no less than 50 percent. As shown on Exhibit A, special deposit claims coverage in a number of states is estimated to be less than 50 percent.

10. NEB. REV. STAT. §44-4821(1)(w) gives the Liquidator the power “[t]o enter into agreements with any receiver or the director . . . or equivalent official of any other state relating to the . . . liquidation . . . of an insurer doing business in both states.” Subject to Court approval, the Liquidator intends to exercise this power to enter into agreements with the insurance officials of states holding special deposits wherein the insurance officials would return the amount thereof to the Liquidator free and clear of any rights or claims except those provided under the agreements, and the amount so returned would become part of Amwest's general assets, would thereby cease to be special deposits and the claimants formerly secured thereby would cease to be special deposit claimants. The Liquidator has already entered into agreements with insurance officials in the states of Georgia and Massachusetts, the effectiveness of which is subject to Court approval. The Liquidator would then permit the former special claimants in such states to participate in distributions of Amwest's general assets on the same basis as all other claimants of the same class. At a minimum, the Liquidator would require each participating insurance official to represent and warrant to the Liquidator that the insurance official has the power and authority under the laws of

such state to return the special deposit to the Liquidator under such terms. Participation by insurance officials would be voluntary.

11. The insurance officials in the affected states have been informed that Judge John A. Colborn's daughter is employed with the Nebraska Department of Insurance as of August, 2008.

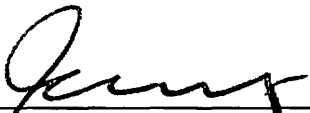
12. Notice of this Application is being provided to the receivers, directors, commissioners, or equivalent insurance officials in the affected states and political subdivisions thereof. Notice of this Application is also being posted to Amwest's website, www.amwest.com.

WHEREFORE, the Liquidator prays for an Order of the Court determining that pursuant to NEB. REV. STAT. §44-4821(1)(w), the Liquidator has the power to enter into agreements with the receivers, directors, commissioners, or equivalent insurance officials of states other than Nebraska in which Amwest did business for the release to the Liquidator of special deposits held by such states and/or political subdivisions thereof free and clear of any security interest otherwise held by the claimants and creditors therein, in consideration of which all such claimants and creditors will have the right to participate in all general asset distributions in accordance with the Liquidation Act's scheme of priorities.

Date: July 24, 2009.

ANN M. FROHMAN, DIRECTOR OF INSURANCE
OF THE STATE OF NEBRASKA, AS
LIQUIDATOR OF AMWEST SURETY
INSURANCE COMPANY, Petitioner

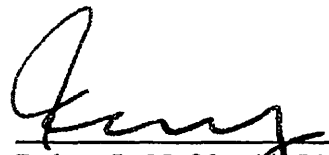
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By: 

John H. Binning (#10320)
Robert L. Nefsky (#15449)
Jane F. Langan (#20736)

NOTICE OF HEARING

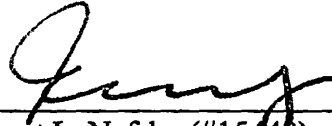
Notice is hereby given that the foregoing Liquidator's Application to Approve Agreements under Neb. Rev. Stat. §44-4821(1)(w) to Return Special Deposits and Participate in General Asset Distributions will be called up for hearing before the Honorable John A. Colborn, District Judge, in Courtroom No. 33 of the Justice and Law Enforcement Center, 575 South Tenth Street, Lincoln, Nebraska, on September 17, 2009, at 9 a.m., or as soon thereafter as the same may be heard by the Court.



Robert L. Nefsky (#15449)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Liquidator's Application to Approve Agreements under Neb. Rev. Stat. §44-4821(1)(w) to Return Special Deposits and Participate in General Asset Distributions was served via regular U.S. Mail, postage prepaid, on July 24, 2009, upon the persons whose names and addresses are attached hereto.



Robert L. Nefsky (#15449)

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Amwest Surety Insurance Company in Liquidation
Summary of State Deposit Claims
July, 2009

Deposit State	NE Class Code	Claimed Amount	By Liquidator		Court Approved Amount	State Deposit	
			Agreed Amount	Denied Amount		Balance	Class 3 Dist %
AR	3	90,954.02	90,954.02		90,954.02	457,032.00	100.00%
AR Total		90,954.02	90,954.02		90,954.02		
GA	3	7,257,322.75	1,301,260.68	5,956,062.07	1,301,260.68	38,721.19	2.98%
	4	282,762.70	71,227.22	211,535.48			
	6	43,020.48		43,020.48			
GA Total		7,583,105.93	1,372,487.90	6,210,618.03	1,301,260.68		
LA	3	3,587,889.26	423,336.06	3,164,553.20	75,085.24	21,018.21	4.96%
	4	18,398.02	18,137.91	260.11			
	6	58,261.34	39,726.47	18,534.87			
LA Total		3,664,548.62	481,200.44	3,183,348.18	75,085.24		
MA	3	2,432,931.51	642,646.88	1,790,284.63	642,646.88	211,585.17	32.92%
	4	59,526.33	58,456.11	1,070.22			
	5	199.00		199.00			
MA Total		2,492,656.84	701,102.99	1,791,553.85	642,646.88		
NC	3	12,539,085.50	4,070,512.51	8,468,572.99	4,071,122.51	-	100.00%
	4	16,344.25	856.25	15,488.00			
	6	902,298.99	29,947.86	872,351.13			
NC Total		13,457,728.74	4,101,316.62	9,356,412.12	4,071,122.51		
NM	3	484,235.00	20,671.23	463,563.77	20,671.23	319,456.00	100.00%
	4	19,821.01	19,821.01	-			
NM Total		504,056.01	40,492.24	463,563.77	20,671.23		
OR	3	820,593.21	696,875.65	123,717.56	715,009.70	-	60.42%
	4	6,185.58	5,878.60	306.98			
	6	135,880.25	-	135,880.25			
OR Total		962,659.04	702,754.25	259,904.79	715,009.70		
SC	3	1,179,046.21	834,683.44	344,362.77	844,693.44	311,034.00	37.26%
	4	48,852.00	50.00	48,802.00			
	6	165,178.76	71,541.95	93,636.81			
SC Total		1,393,076.97	906,275.39	486,801.58	844,693.44		
VA	3	2,505,402.32	455,143.93	2,050,258.39	313,543.94	-	32.45%
	4	320,438.51	85,024.94	235,413.57	40,500.97		
	6	4,935.00		4,935.00			
VA Total		2,830,775.83	540,168.87	2,290,606.96	354,044.91		
Grand Total		32,979,562.00	8,936,752.72	24,042,809.28	8,115,488.61		

EXHIBIT A

1 of 2

Amwest Surety Insurance Company in Liquidation
 Summary of TX County Deposit Claims
 July, 2009

Claimant's Name	Claim Amount	Agreed Amount	Denied Amount	Court Allowed Amount	County Deposit Applied	% Paid by Deposit
Denton County Sheriff's Dept.	34,233.73	-	28,781.25	5,452.48	810.00	14.86%
Montgomery County Court/David K. Walker	1,000.00	-	-	-	-	0.00%
State of Texas	52,190.00	50,450.00	1,740.00	50,450.00	-	0.00%
The State of Texas	66,573.17	8,253.25	58,319.92	7,957.62	27,791.60	100.00%
Travis County	880,303.00	821,746.00	71,280.00	798,165.11	100,000.00	12.53%
Grand Total	1,034,289.90	880,449.25	180,131.17	882,025.21	128,601.60	

EXHIBIT A
 2 of 2

Amwest Surety Insurance Company in Liquidation
Ball Claimant Address List
July, 2009

Claimant's Name	Address Line 1	Address Line 2	Address Line 3	City	State2	Zip
Denton County Sheriff's Dept.	PO Box 2850			Denton	TX	76202
Montgomery County Court/David K. Walker	207 W. Phillips Ste 100			Conroe	TX	77301
State of Texas	c/o Sharon Brooks	PO Box 1748		Austin	TX	78767
The State of Texas	1201 Franklin, Suite #600			Houston	TX	77002
Travis County	c/o Sharon Brooks	PO Box 1748		Austin	TX	78767

Amwest Surety Insurance Company
 Insurance Department Contacts
 July, 2009

State	Name	Title	Office	Address	Address 2	City	State2	Zip	Phone	Phone 2	Fax	E-mail
Arkansas	Jay Bradford	Commissioner	Arkansas Insurance Department	1200 West Third Street		Little Rock	AR	72201-1924	(501) 371-2600	1-800-262-9134	(501) 371-2618	
Georgia	John W. Oxendine	Commissioner	Office of Insurance and Safety Fire Commissioner	Two Martin Luther King, Jr. Drive	Floyd Memorial Building, 704 West Tower	Atlanta	GA	30334	(404) 656-2056		(404) 657-8542	
Louisiana	James J. Donelon	Commissioner	Louisiana Department of Insurance	1702 N. 3rd Street		Baton Rouge	LA	70802	1-800-255-5300			
Massachusetts	Nonnie S. Burnes	Commissioner	Office of Consumer Affairs and Business Regulation	Division of Insurance	One South Station, 5th Floor	Boston	MA	02110-2208	(617) 521-7794			
New Mexico	Morris J. Chavez	Superintendent	New Mexico Public Regulation Commission	Division of Insurance	P.O. Drawer 1269	Santa Fe	NM	87504-1269	(505) 827-4621			
North Carolina	Wayne Goodwin	Commissioner	North Carolina Department of Insurance	1201 Mail Service Center		Raleigh	NC	27699-1201				
South Carolina	Scott H. Richardson	Director	Department of Insurance	Post Office Box 100105		Columbia	SC	29202-3105	(803) 737-6160		(803) 737-6205	info@doi.sc.gov
Oregon	Teresa Miller	Acting Insurance Administrator	Oregon Insurance Division	P.O. Box 14480		Salem	OR	97309-0405	(503) 947-7980		(503) 378-4351	