

Prepayment Agreement

AGREEMENT FOR LIQUIDATOR'S PAYMENT OF POST-LIQUIDATION WORKERS' COMPENSATION INDEMNITY CLAIMS ON BEHALF OF STATE GUARANTY ASSOCIATIONS

This Agreement for Liquidator's Payment of Post-Liquidation Workers' Compensation Indemnity Claims on Behalf of State Guaranty Associations ("Agreement") is entered into as of the ___ day of , 20__ by and between _____ in his capacity as Special Deputy Receiver of the _____ Company, in liquidation, and the signatory State Guaranty Associations.

WHEREAS, on _____, 20__, [COMPANY] was found to be insolvent and ordered into liquidation by the [COURT], Case No. _____; and

WHEREAS, in its Judgment, Decree and Final Order of Liquidation the Court appointed [LIQUIDATOR], [TITLE] as the Receiver and Liquidator of [COMPANY], and further approved the Director's appointment of _____ as Special Deputy Receiver of [COMPANY]; and

WHEREAS, as a result of the liquidation of [COMPANY], the State Guaranty Associations became obligated to pay certain claims arising out of policies of insurance written by [COMPANY]; and

WHEREAS, among the policy claims to be transferred to the State Guaranty Associations are workers' compensation indemnity claims; and

WHEREAS, the Liquidator and the State Guaranty Associations agree that it is of critical importance that workers' compensation indemnity payments continue to be made timely and without interruption while responsibility for future payments is transferred from the Liquidator to the State Guaranty Associations; and

WHEREAS, the Liquidator, utilizing assets of [COMPANY]'s estate, will fund workers' compensation indemnity benefits for injured workers who are eligible for workers' compensation indemnity benefits under policies of insurance issued by [COMPANY]; and

WHEREAS, the State Guaranty Associations are authorized and obligated by their respective enabling statutes, to pay only for claims that meet the definition of a "Covered Claim," as that term is defined in their respective enabling statutes and therefore, it is necessary for the Parties to identify and account for all claims paid pursuant to this Agreement.

NOW, THEREFORE, the parties agree as follows:

1. The Liquidator may pay, on behalf of the State Guaranty Associations, one check representing weekly workers' compensation indemnity benefits for no more than [#] weeks on "Covered Claims" as defined in the enabling statutes of the signatory State Guaranty Associations for workers' compensation indemnity benefits arising out of insurance policies issued by [COMPANY] and that are payable after the date on which the company was ordered into liquidation.
2. The Liquidator is not authorized to pay on behalf of the State Guaranty Associations any claims that are not "Covered Claims" nor claims of any description other than workers' compensation indemnity benefits including but not limited to claimants' attorney fees, workers' compensation medical payments, and claims on policies or contracts issued by entities other than [COMPANY], except as the State Guaranty Association may approve in writing. Any such request must be submitted to and approved by the authorized representative of the State Guaranty Associations as designated on the signature page below.
3. The Liquidator shall maintain accurate records of all claims paid on behalf of the State Guaranty Associations. Such records shall contain sufficient detail to permit the State Guaranty Associations to verify the nature, amount, date of payment, identity of the claimant, policy number, claim number, and period covered by the payment. As soon as reasonably practicable, but no later than 30 days after the payments are made in accordance with Paragraph 1, the Liquidator shall send to each State Guaranty Association a spreadsheet listing all payments made under this Agreement and containing the above identified information.
4. Within 60 days of its receipt of the spreadsheet, the State Guaranty Association on whose behalf the payment by the Liquidator was made shall reimburse the Liquidator for all payments made by the Liquidator in compliance with this Agreement. Such reimbursements shall be deemed approved as a policyholder level claim against the estate of [COMPANY]. Nothing herein shall affect any rights of any State Guaranty Association under statutory net worth recoupment provisions or otherwise.
5. Each Party shall provide the other with a report on all payments and subsequent adjustments in a form mutually agreed upon by the Parties.
6. The Liquidator shall provide the State Guaranty Associations with reasonable access, during normal business hours, to the books, records, and files pertaining to payments made under this agreement, and will respond affirmatively and in good faith to all reasonable requests for the State Guaranty Associations for such information.
7. The Liquidator shall retain responsibility for filing reports with the state workers' compensation bureau, rating bureau or similar entity for all claims paid on behalf of the State Guaranty Associations.
8. The Liquidator shall promptly send to the State Guaranty Associations the claim files, including policies, for all open workers' compensation claims.

9. In the event the Liquidator paid any claim on behalf of a State Guaranty Association except as authorized by this Agreement and such payment was not accounted for in the adjustment process set out in Paragraph 3, [and was reimbursed by the State Guaranty Association under Paragraph 4,] the Liquidator shall promptly reimburse the State Guaranty Association by issuing a check for the amount of the unauthorized payment and recording the payment as a recovery to the claim file.

10. The pre-payments made under this Agreement shall not be included in the UDS G-Record by the Liquidator and shall be reported by the State Guaranty Associations in the C-Records transmitted to the Liquidator.

11. In the event of any dispute arising under this Agreement, the Parties agree to first attempt to resolve such dispute through negotiation. If the Parties are unable to resolve the dispute through negotiation, they agree to submit the matter to the [LIQUIDATION COURT], Case No. _____. In such instances, the State Guaranty Association involved in the dispute shall submit to the jurisdiction of the Court solely for the purpose of resolving the dispute and does not thereby submit itself to the jurisdiction of the Court for any other purpose. Moreover, the Parties agree that any dispute on the issue of whether a payment was authorized under this Agreement or whether the claim was a “covered claim” shall be determined by applying the enabling statute of the applicable State Guaranty Association.

12. This Agreement represents the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements with respect thereto.

13. This Agreement may be amended and any provision herein may be waived by either Party, but only in writing signed by the Party against whom such amendment or waiver is sought to be enforced.

14. This Agreement may be executed in one or more counterparts all of which together constitute one and the same instrument and shall become effective as to the Liquidator and the State Guaranty Association when signed by the Party and delivered to the other Party by mail, fax, or email. This Agreement may be executed using electronic signatures. Electronic signature shall have the same force and effect as manual signatures.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date indicated below:

Agreement for Liquidator’s Payment of Post-Liquidation Workers’ Compensation Indemnity Claims on Behalf of State Guaranty Associations

[COMPANY], in Liquidation

_____, as Special Deputy Receiver

Date: _____

Agreement for Liquidator's Payment of Post-Liquidation Workers' Compensation Indemnity
Claims on Behalf of State Guaranty Associations

[Insert Name of State Guaranty Association]

"State Guaranty Association"

By: _____

As its: _____

Date: _____

SAMPLE