

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

COMMONWEALTH OF VIRGINIA *ex rel.*
STATE CORPORATION COMMISSION

and

ALFRED W. GROSS,
COMMISSIONER OF INSURANCE,

Applicants,

v.

HOW INSURANCE COMPANY,
HOME WARRANTY CORP., and
HOME OWNERS WARRANTY CORP.,

Respondents.

CASE NO. INS-1994-00218

NINTH DIRECTIVE OF DEPUTY RECEIVER

1. On November 29, 1994, the Deputy Receiver of HOW Insurance Company, a Risk Retention Group ("HOWIC" or the "Company"), directed that 40% be paid on each approved Direct Claim, and imposed a suspension and moratorium on the payment of Indirect Claims pursuant to the powers granted by the Circuit Court of the City of Richmond, Virginia, in its Final Order Appointing Receiver for Rehabilitation or Liquidation dated October 14, 1994 (the "Final Order"). In that Directive, Direct Claims were defined as those claims for the reasonable costs of repairing defects which arose out of, and were within the coverage and subject to the limits of, the warranty/insurance documents (the "Warranty/Insurance Documents") issued by the Company, less any applicable deductible. Indirect Claims were defined as those claims for amounts of extra contractual obligations, non-economic damages, consequential damages, and litigation costs and attorney fees.

2. In the Second Directive, issued on January 23, 1996, the Deputy Receiver directed that the amount being paid on approved Direct Claims be increased from 40% to 50%, and continued the suspension and moratorium on the payment of Indirect Claims.

3. In the Third Directive, issued on December 28, 1998, the Deputy Receiver directed that the amount being paid on approved Direct Claims be increased from 50% to 60%, and that the following Indirect Claims be reclassified as approved Direct Claims: (i) claims approved by the Deputy Receiver for damages determined to be extra contractual obligations of the Company, as well as claims approved for non-economic damages, consequential damages, litigation costs, or attorney fees incurred by a Home Owner (a "Home Owner" being an owner of a home which is covered by a certificate of insurance evidencing the coverages of the Warranty/Insurance Documents) or Member Builder (a "Member Builder" being a member of Home Warranty Corporation and policyholder of the Company) in asserting a claim against the Company before receivership; and (ii) claims approved by the Deputy Receiver for litigation costs and attorney fees incurred by a prevailing Member Builder in an action brought against the Member Builder to recover under the Major Structural Defect Insurance Coverage provided by HOWIC. The suspension and moratorium on the payment of all other Indirect Claims, and claims of lesser priority, was continued pending further Orders or Directives.

4. In the Fourth Directive, issued on August 13, 1999, the Deputy Receiver directed that the amount being paid on approved Direct Claims be increased from 60% to 70%, and continued the suspension and moratorium on the payment of Indirect Claims, and claims of lesser priority, pending further Orders or Directives.

5. On July 16, 1999, the Deputy Receiver approved the payment of 8% per annum simple interest on all deferred approved Direct Claim amounts accrued since October 14, 1994, to be paid only after full satisfaction of all other claims of higher priority.

6. In the Fifth Directive, issued on November 14, 2000, the Deputy Receiver directed that the amount being paid on approved Direct Claims be increased from 70% to 100%, that interest on deferred approved Direct Claim amounts be suspended, and that simple interest accrue thereafter at 8% per annum on interest previously accrued on deferred approved Direct Claims.

7. In the Sixth Directive, issued on August 5, 2005, the Deputy Receiver directed that the rate of interest be changed from 8% per annum simple interest through September 30, 2005, to 6% per annum simple interest thereafter.

8. In the Seventh Directive, issued on June 12, 2008, the Deputy Receiver directed that the HOWIC Plan of Liquidation be implemented.

9. In the Eighth Directive, issued on March 2, 2015, the Deputy Receiver directed that the HOW/HWC Plan of Liquidation be implemented, including the payment in full of all approved general creditor claims against the HOW Companies, including the refund of all approved vested capital contributions to Eligible Builders, and the payment of interest on approved claims in the same order of priority as the payment of the underlying claims.

10. The Deputy Receiver has determined that the best interests of the Home Owners, Member Builders, and creditors would be served by promulgating a single directive directing the dates, interest rates, and methods to be used for calculating the accrual of interest on deferred approved Direct Claims, interest previously accrued for deferred approved Direct Claims, and interest on all other claims.

THEREFORE, in accordance with the powers granted to the Deputy Receiver in the Final Order, THE DEPUTY RECEIVER HEREBY DIRECTS:

a. That interest on each deferred portion of an approved Direct Claim shall be calculated as follows:

- i. The applicable interest rate shall be 8% per annum simple interest.
- ii. For purposes of the interest calculations, a daily interest factor shall be used, based on the assumption that each year during the relevant period has an average of 365.25 days:

Daily interest factor for 8% interest:

$$= .08/365.25$$

- iii. The number of days for the accrual of interest between any two dates shall be calculated as follows:
 - (1) Number of Days = Date2 - Date1 + 1, provided however,
 - (2) If Date2 = Date1, the Number of Days = 0
- iv. The starting date for the calculation of interest on a deferred portion of an approved Direct Claim shall be the date on which the Direct Claim was approved.
- v. The ending date for the calculation of interest on a deferred portion of an approved Direct Claim shall be the earlier of:
 - (1) The date on which the check was issued in payment of that deferred portion of the approved Direct Claim; or
 - (2) November 14, 2000.

b. That interest on the interest accrued on deferred portions of an approved Direct Claim through November 14, 2000, shall be calculated as follows:

i. The applicable interest rates shall be 8% per annum simple interest through September 30, 2005, and 6% per annum simple interest thereafter.

ii. For purposes of the interest calculations, daily interest factors shall be used, based on the assumption that each year during the relevant period has an average of 365.25 days:

(1) Daily interest factor for the period of 8% interest:

$$= .08/365.25$$

(2) Daily interest factor the period of 6% interest:

$$= .06/365.25$$

iii. The number of days for the accrual of interest between any two dates shall be calculated as follows:

(1) Number of Days = Date2 - Date1 + 1, provided however,

(2) If Date2 = Date1, the Number of Days = 0

iv. The starting date for the calculation of interest on the total interest accrued through November 14, 2000, on deferred portions of approved Direct Claims, shall be November 15, 2000.

v. The ending date for the calculation of interest on the total interest accrued, through November 14, 2000, on deferred portions of approved Direct Claims, shall be the date on which the check in payment of interest is issued.

c. That interest on approved general creditor claims shall be calculated as follows:

i. The applicable interest rates shall be 8% per annum simple interest through September 30, 2005, and 6% per annum simple interest thereafter.

ii. For purposes of the interest calculations, daily interest factors shall be used, based on the assumption that each year during the relevant period has an average of 365.25 days:

(1) Daily interest factor for the period of 8% interest:

$$= .08/365.25$$

(2) Daily interest factor the period of 6% interest:

$$= .06/365.25$$

iii. The number of days for the accrual of interest at the daily interest factor between any two dates shall be calculated as follows:

(1) Number of Days = Date2 - Date1 + 1, provided however,

(2) If Date2 = Date1, the Number of Days = 0

iv. The starting date for the calculation of interest on an approved general creditor claim shall be the date on which the general creditor claim was approved.

v. The ending date for the calculation of interest on an approved general creditor claim shall be the date on which the check was issued in payment of the approved general creditor claim.

d. That this Directive supersedes all prior directives and policies adopted by the Deputy Receiver regarding the specific matters it addresses in the disposition of claims against the Company in receivership. To the extent of any conflict or inconsistency between this Directive and any such prior directive or policy, this Directive shall govern and control, pending further Orders and Directives.

SIGNED this 23rd day of July 2015.

Jacqueline K. Cunningham, Deputy Receiver of Home Warranty Corporation, Home Owners Warranty Corporation, and HOW Insurance Company, a Risk Retention Group, in Receivership


