

**IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI**

CHLORA LINDLEY-MYERS, DIRECTOR	)	
MISSOURI DEPARTMENT OF COMMERCE	)	
AND INSURANCE,	)	
	)	
Plaintiff,	)	
v.	)	Case No.: 15AC-CC00224
	)	
LUMBERMEN'S UNDERWRITING ALLIANCE,	)	
	)	
Defendant.	)	

**ORDER APPROVING SECOND INTERIM DISTRIBUTION**

Now on this 7<sup>th</sup> day of June, 2022, the Court, having heard the Plaintiff's Motion for Approval of Second Interim Distribution of Estate Assets, and being well and sufficiently advised does find and conclude as follows:

**THE COURT FINDS**

1. On May 23, 2016, this Court entered a Judgment, Decree and Order of Liquidation with Finding of Insolvency (the "Liquidation Order") against LUA, and placed LUA into liquidation.
2. Pursuant to the Liquidation Order and the Insurers Supervision, Rehabilitation and Liquidation Act, Mo. Rev. Stat. §§ 375.1150 et seq. (the "Liquidation Act"), the Liquidator acts for and on behalf of LUA and is vested by operation of law with title to all of the property, contracts, rights of action, books and records of LUA, and is administering them under the general supervision of the Court. The Liquidation Order and the Liquidation Act also direct the Liquidator to (a) identify, marshal and liquidate the assets of the Estate; (b) process and evaluate

claims to determine the liabilities of the Estate; and (c) distribute assets to claimants of the Estate in accordance with Mo. Rev. Stat. § 375.1218.

3. Pursuant to Mo. Rev. Stat. § 375.1222, “[u]nder the direction of the court, the liquidator shall pay distributions in a manner that will assure the proper recognition of the priorities and a reasonable balance between the expeditious completion of the liquidation and the protection of unliquidated and undetermined claims, including third party claims.”

4. On June 1, 2021, this Court approved a First Interim Distribution at 40% of certain allowed Class 2 claims. The Liquidator paid a total of \$6,856,747 in the First Interim Distribution. That First Interim Distribution did not include a distribution to state Guaranty Associations (“GAs”) because, at that time, the GAs had received a total of \$40,952,231 through early access payments pursuant to Mo. Rev. Stat. § 375.1205 (\$17,438,332.32), and payments pursuant to the Joint Collection Agreement (“JCA”) (\$23,513,898.71). Payments under the First Interim Distribution went to Non-GA Class 2 claimants (policyholders) that had the effect of leveling all Class 2 claimants – GA and Non-GA claimants alike – to approximately 40% of their allowed claims.

5. On December 21, 2021, this Court entered its Order approving an amendment to the JCA (the “Amended JCA”) and suspension of payments under the Early Access Plan.

6. Pursuant to the Amended JCA, the Liquidator and the GAs who were signatories to the JCA agreed to divide post-liquidation Large Deductible Reimbursements evenly, with 50% considered a general asset of the Estate and 50% distributed as direct reimbursements to the signatory GAs that paid the underlying claims rather than as general assets of the Estate.

7. Because the GAs had previously received 80% of the Large Deductible Reimbursements, and some GAs received early access distributions, many GAs have been

“overpaid” in that some GAs have received amounts greater than the 40% level targeted in the First Interim Distribution. Accordingly, as set forth in the Amended JCA, the Liquidator has been off-setting the 50% direct reimbursements due the GAs against the overpayments.

8. This proposed Second Interim Distribution will include Non-GA Class 2 allowed claims and the GAs’ Class 2 claims, after off-set.

9. The Liquidator files semi-annual reports with this Court, which provide detailed information regarding, among other things, the financial condition of LUA and the claims process. The Liquidator filed her most recent semi-annual report as of December 31, 2021, on April 15, 2022.

10. Subject to caveats regarding financial information in the semi-annual reports and in the Notes to the financial statements, total unrestricted estimated assets for LUA as of December 31, 2021 were \$129,807,872. Total estimated liabilities were \$347,221,759, leaving an estimated net deficit of \$131,623,420. As of December 31, 2021, the estimated reserve for Class 1 claims was \$18,509,082. Investment maturities in the end of May 2022, will generate available cash and cash equivalents of approximately \$12 million, which will provide sufficient cash for continued payment in full of all Class 1 claims and for this proposed Second Interim Distribution on Class 2 claims.

11. The deadline for filing Proofs of Claim (“POCs”) was set at May 24, 2016. As of April 1, 2022, the Liquidator has received 1,392 POCs.

12. The Liquidator has preliminarily classified 1,270 POCs as Class 2 claims. As of April 1, 2022, LUA had issued Class 2 Notice of Determinations (“NOD”) for 1,161 of the 1,270 Class 2 claims.<sup>1</sup>

13. Of the 1,161 NODs issued, the Liquidator has allowed 118 POCs – in full or in part and/or as contingent – as Class 2 claims.<sup>2</sup> A listing of all allowed Class 2 POCs, including the amount allowed, amount paid in the First Interim Distribution, and amount paid to GAs is attached to the Liquidator’s Motion as Revised Exhibit A

14. LUA’s staff and consultants have completed an asset distribution analysis that projects inflow and outflow in future years for the purpose of estimating ultimate distribution levels to determine the appropriate amount for the Second Interim Distribution. Cash coming into the Estate consists largely of deductible recoveries, reinsurance collections, second injury fund recoveries and investment income. The cash going out of the Estate is and will be attributable to operating expenses and interim asset distributions to Non-GA and GA claimants.

15. The Liquidator identified three categories of Class 2 approved claims. (1) contingent claims of GAs, some of which have received JCA payments, early access distributions, and/or seized or have access to state deposits; (2) contingent claims of insureds who are administering and paying claims under their workers’ compensation policy directly because the claims were rejected for statutory reasons by the GAs; and (3) claimants who have received NODs allowing their POC in full or in part.

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<sup>1</sup> The Liquidator’s staff has continued to review POCs and the Liquidator updated the number of POCs classified as Class 2 and the number of NODs issued at the hearing.

<sup>2</sup> The GAs each submitted a POC. Although the Liquidator has classified 48 GA POCs for claim payments and ALAE as contingent Class 2 claims, and included the GA POCs in the total numbers, the Liquidator has not issued NOD letters to the GAs.

16. The Liquidator's analysis employs a conservative scenario in order to adequately protect Class 2 claimants, including those who have and those who have not received a NOD, from the risk of disproportionate payouts. Disproportionate payouts can occur due to interim distribution overpayments, which generally cannot be recovered from individual claimants, seizure or availability of state deposits, and overpayments to GAs through the JCA and/or early access payments. The analysis also utilizes the best estimate of ultimate losses of known and unknown losses and ALAE exposures, based on claims data reported to the Liquidator through December 31, 2021.

17. Although the conservative scenario produced by the analysis is considered reasonable, the actual financial results for the Estate could deviate from specific projections due to the uncertainty inherent in numerous assumptions for various factors.

18. Based on the scenarios produced by the asset distribution analysis and considering the various factors and prior distributions, the Liquidator proposed a second distribution that brings all Non-Ga and GA claimants to a paid percentage of 50% of NOD allowed amounts as follows:

- a. Non-GA Class 2 POCs allowed in full or in part for a fixed amount: Will receive an amount to arrive at a total of 50% of the allowed amount.
- b. Non-GA Contingent Class 2 POCs allowed in full or in part: Will receive an amount to arrive at a total of 50% of amount allowed that the claimant actually paid through December 31, 2021.
- c. GA Contingent Class 2 claims: Will receive an amount to arrive at a total of 50% of amount actually paid as of December 31, 2021. If, however, a GA has received early access payments, JCA payments, and/or has seized

or has access to a state deposit, it will not receive a distribution if it already has received at least 50% of amounts actually paid through overpayment under the JCA or early access payments, or if it has seized or has access to a state deposit of at least 50% of amounts actually paid.

19. Based on this distribution calculation, a 50% distribution would result in a second interim distribution totaling approximately \$3.1 million.

20. The Liquidator believes that the amount of the proposed Second Interim Distribution fulfills her duty to “pay distributions in a manner that will assure the proper recognition of the priorities and a reasonable balance between the expeditious completion of the liquidation and the protection of unliquidated and undetermined claims . . .” as required by Mo. Rev. Stat. § 375.1222.

21. The Second Interim Distribution is fair and reasonable to LUA and its creditors.

**IT IS HEREBY ORDERED, ADJUDGED DECREED that:**

1. A Second Interim Distribution percentage for a total of 50% of NOD allowed amounts is approved, as follows: (1) Non-GA Class 2 POCs allowed in full or in part for a fixed amount: a total of 50% of the allowed amount; and (2) Contingent Non-GA Class 2 POCs allowed in full or in part: a total of 50% of the allowed amount that the claimant has actually paid as of December 31, 2021; and (3) GA Contingent Class 2 claims: a total of 50% of amounts actually paid as of December 31, 2021. If, however, a GA has received early access payments, JCA payments, and/or has seized or has access to a state deposit, it will not receive a distribution if it already has received at least 50% of amounts actually paid by the GA as of December 31, 2021.

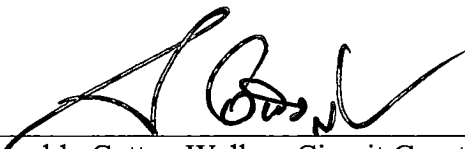
2. The Liquidator is directed to issue checks based on the Second Interim Distribution to the Distribution Claimants and GAs as set forth in Revised Exhibit A to the Liquidator's Motion;

3. For this Second Interim Distribution and all future distributions except the final distribution, the Liquidator need not issue a check for less than \$10.00 per claimant. The Liquidator shall issue a check if a claimant's distribution amount is increased beyond the threshold *de minimus* amount in the future. This *de minimus* distribution threshold will not apply to the final distribution of LUA assets and all claimants will receive the ultimate distribution percentage in the final distribution, even if the amount is less than \$10.00;

4. In all respects, the conduct and actions of the Liquidator, her employees, agents and counsel in connection with the Second Interim Distribution, is affirmed and approved in all respects;

5. The Liquidator is authorized to enter such other agreements and take such other actions as may be necessary to effectuate the Second Interim Distribution without further approval of the Court; and

6. There is no just reason for delay and this Order constitutes a final judgment fully resolving all issues relating to the Second Interim Distribution.

  
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Honorable Cotton Walker, Circuit Court Judge  
19<sup>th</sup> Judicial Circuit, Division III