

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

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

**MOTION TO APPROVE AMENDMENT TO LARGE DEDUCTIBLE AGREEMENT  
AND SUSPENSION OF PAYMENTS UNDER EARLY ACCESS PLAN**

COMES NOW plaintiff Chlora Lindley-Myers, Director, Missouri Department of Commerce and Insurance, in her capacity as Receiver (the “Receiver”) of Lumbermen’s Underwriting Alliance (“LUA” or the “Estate”), and respectfully requests that this Court enter an Order (1) approving Amendment No. 1 to Agreement Regarding the Collection of Policyholders’ Large Deductible Policy Obligations in the Liquidation of Lumbermen’s Underwriting Alliance (the “Amendment”), by and among the signatory guaranty associations (“Guaranty Associations”), which amends the Agreement Regarding the Collection of Policyholders Large Deductible Policy Obligations in the Liquidation of Lumbermen’s Underwriting Alliance (the “Large Deductible Agreement”) and resolves the Receiver’s and the Guaranty Associations’ disagreement regarding classification of the Large Deductible Recoveries (attached hereto as Exhibit A); and (2) approving the suspension of payments under the Early Access Plan.

In support of her Motion, the Receiver states the following:

## BACKGROUND

1. On May 23, 2016, this Court entered a Judgment, Decree and Order of Liquidation with Finding of Insolvency (the “Liquidation Order”) against LUA. The Liquidation Order found LUA to be insolvent, terminated the rehabilitation proceeding, and placed LUA into liquidation. The Court appointed the Director of the Missouri Department of Insurance, and his successors in office, as LUA’s Receiver. Pursuant to the Order of Liquidation, the Receiver took possession and control over the assets of LUA to administer the same under the direction and orders of the Court before which the liquidation is pending and in accordance with the provisions of the Insurers Supervision, Rehabilitation and Liquidation Act, Mo. Rev. Stat. §§ 375.1150 et seq. (“Liquidation Act”).

### Early Access Plan

2. Pursuant to Mo. Rev. Stat. § 375.1205.1, the Receiver developed an Early Access Plan to ensure equality in the treatment of affected guaranty associations and funds of the states and other jurisdictions with respect to early access distributions and to ensure the proper return of early access distributions if necessary to recognize the priority to be accorded all similar creditors of Lumbermen’s under Mo. Rev. Stat. § 375.1218.

3. On May 26, 2017, this Court entered an Order, approving the Receiver’s Early Access Plan.

4. Since entry of the May 26, 2017 Order, the Receiver made four early access plan payments to affected and eligible state guaranty associations (“SGAs”) in the total amount of \$17,438,332.32. To be eligible to receive early access distributions, SGAs were required to execute early access agreements, which provided, in part, that payment received in excess of what

an SGA was entitled to receive, as a Priority Class 2 creditor, would have to be repaid to the Lumbermen's estate (the "Estate").

5. Earlier this year, the Receiver determined that the financial condition of the Estate warranted initiating interim distributions of Estate assets to non-SGA Priority Class 2 approved proofs of claim ("POCs"). On June 1, 2021, this Court entered its order approving a First Interim Distribution percentage of 40% for allowed amounts, as follows: (1) Non-SGA Class 2 POCs allowed in full or in part for a fixed amount: 40% of the allowed amount; and (2) Contingent Non-SGA Class 2 POCs allowed in full or in part: 40% of the allowed amount that the claimant has actually paid as of December 31, 2020 (collectively the "Distribution Claimants").

6. Depending on available funds and subject to Court approval, the Receiver intends to continue making interim distributions to allowed Class 2 claimants, including the SGAs, rendering payments under the Early Access Plan no longer necessary.

7. Accordingly, the Receiver moves the Court to suspend payments under the Early Access Plan, pending further order of the Court.

### **Amendment to Large Deductible Agreement**

8. One of the rights of action vested in the Receiver is the right to enforce the contractual obligations of LUA's policyholders ("Policyholders") to reimburse for payments made within a Policyholder's deductible layer under their Paid Loss Large Deductible Program workers' compensation insurance programs ("Large Deductible Programs"). Under these Large Deductible Programs, it was always the responsibility of the Policyholders to pay the insured losses within their deductible layers.

9. Prior to Rehabilitation and Liquidation, LUA issued workers' compensation insurance policies (the "Policy" or "Policies") under these Large Deductible Programs, and post-

Liquidation, those Policies continue to generate substantial insured losses resulting from illness and injuries to the Policyholders' employees. Policyholders paid premium to LUA for administering their insurance programs, paying (or fronting) the losses within the Policyholders' large per occurrence deductible layers, loss adjustment expenses directly allocated to particular claims, taxes, certain other assessments and surcharges, as applicable, and the Policyholders provided collateral to LUA to secure the Policyholders' payment or reimbursement obligations thereunder.

10. Prior to Liquidation, LUA paid all amounts due to a Policyholder's employee who became injured or sick as a result of their employment, as well as all allocated direct expenses, taxes and any other amounts required under the Policy ("Paid Losses"). Subsequent to the Liquidation, as required by law – but only to the extent such Paid Losses were considered "Covered Claims" – the SGAs continued to pay these Paid Losses. Under the terms of their Large Deductible Programs, the Policyholders are liable to reimburse LUA for such Paid Losses, up to the per occurrence deductible (the "Large Deductible Reimbursements").

11. After entry of the Liquidation Order, the Receiver and certain SGAs negotiated the Large Deductible Agreement and this Court entered an Order approving the Large Deductible Agreement on November 23, 2016.

12. Pursuant to the Large Deductible Agreement, the Receiver and the signatory SGAs agreed to cooperate in the collection of post-Liquidation Large Deductible Reimbursements.

13. An important aspect of the Large Deductible Agreement concerned the characterization of the collected Large Deductible Reimbursements. The Receiver asserted that any amount collected from Policyholders resulting from post-Liquidation claims paid by the SGAs are general assets of the Estate, and further that any distribution of these amounts to SGAs should

be accounted for as “early access disbursements” pursuant to Mo. Rev. Stat. § 375.1205. The SGAs, on the other hand, asserted that any amounts collected from Policyholders resulting from post-Liquidation paid claims should inure to the benefit of the SGAs as direct reimbursements rather than as general assets of the Estate. All parties expressly reserved all rights with respect to the legal and equitable arguments supporting their respective positions on the ownership/entitlement issues.

14. The Receiver and the SGAs have negotiated in good faith and – even though all Parties maintain their respective positions concerning the characterization of the collected Large Deductible Reimbursements – have reached agreement regarding treatment of the collected Large Deductible Reimbursements in the Estate, which is set forth in the Amendment and the Settlement Agreement attached as Appendix D thereto.

15. Specifically, the Receiver and the SGAs agree that all monies collected by the Receiver from a Policyholder as Large Deductible Reimbursements on post-liquidation claims paid by signatory SGAs shall be accounted for as follows: The Receiver will deduct Expenses, as provided in Section 2.8 of the Large Deductible Agreement, as amended, from post-liquidation Large Deductible Reimbursements. The remaining post-liquidation Large Deductible Reimbursements shall be divided evenly, with 50% considered a general asset of the Estate and 50% disbursed as direct reimbursements to the signatory SGAs that paid the underlying claim rather than as general assets of the Estate.

16. Prior to the Amendment, the Receiver accounted for all monies collected from a Policyholder as Large Deductible Reimbursements on post-liquidation claims paid by signatory SGAs in a segregated account, unless and until disbursed. On a quarterly basis, the Receiver remitted to the signatory SGAs 80% of the post-liquidation Large Deductible Reimbursements that

the Receiver actually collected from the Policyholders. The Receiver held the remaining 20% in the segregated account.

17. The compromise agreement reflected in the Amendment resolves the disagreement as to the accounting for post-liquidation Large Deductible Reimbursements actually collected from the Policyholders, and results in an overpayment to many of the signatory SGAs because the Receiver previously remitted 80% of the amount actually collected from the Policyholder to the signatory SGAs. The Amendment addresses the overpayment through offset. If amounts owed to an SGA are not adequate to offset the entire overpayment, such overpayment will be considered as an early access payment as set forth in the Large Deductible Agreement, as amended, and the Early Access Plan.

18. The Amendment also renders the segregated account unnecessary, and the Receiver seeks to close the account and absorb the funds and investments into the Estate.

19. The Receiver believes that the Amendment is in the best interest of the creditors of the Estate. The framework of cooperation between the Receiver and the SGAs to effectively and efficiently collect amounts properly due and owing from Policyholders will continue, and all disagreements over the characterization and disposition of the collected amounts are resolved, which will allow the Receiver to proceed with collection and distribution of estate assets through regular interim distributions, as approved by this Court.

#### **Notice of Motion**

20. The Liquidator shall provide written notice of this Motion to all Distribution Claimants, at the address listed in each Distribution Claimant's Proof of Claim.

21. The Liquidator shall post a copy of this Motion on its website: [www.lumbermensunderwriting.com](http://www.lumbermensunderwriting.com).

22. The Liquidator shall provide a copy of this Motion to the National Conference of Insurance Guaranty Funds for distribution to all SGAs.

WHEREFORE, the Receiver requests that the Court grant this motion and issue an Order as follows:

- a) Approving the Amendment to the Agreement;
- b) If amounts owed to an SGA are not adequate to offset the entire overpayment, directing the Receiver to consider such overpayment as an early access payment as set forth in the Large Deductible Agreement, as amended, and the Early Access Plan.
- c) Approving closure of the segregated account;
- d) Suspending payments under the Early Access Plan, pending further order of the Court;
- e) Affirming and approving in all respects the conduct of the Receiver, her employees, agents and counsel in connection with the Amendment requested by this Motion.

Respectfully submitted,

BRYAN CAVE LEIGHTON PAISNER, LLP

/s/ Jodi M. Adolf

Bruce E. Baty, MO Bar # 32386

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Attorneys for Plaintiff

**CERTIFICATE OF SERVICE**

Pursuant to Missouri Rule of Civil Procedure 55.03(a), I hereby certify that I personally caused the signature to the original of the foregoing, which was filed this 10th day of November, 2021 using this Court's electronic filing system, which sends notification of filings to counsel of record.

/s/ Jodi M. Adolf  
**Attorney for Plaintiff**

**Amendment No. 1 to  
Agreement Regarding the Collection of Policyholders Large Deductible Policy Obligations  
in the Liquidation of Lumbermen’s Underwriting Alliance**

THIS AMENDMENT No. 1 (“Amendment”) to the Agreement Regarding the Collection of Policyholders Large Deductible Policy Obligations in the Liquidation of Lumbermen’s Underwriting Alliance (the “Agreement”) is made effective this [ ] day of December, 2021, by and among Chlora Lindley-Myers, Director of the Missouri Department of Commerce and Insurance, as Receiver for Lumbermen’s Underwriting Alliance (the “Receiver”) and the State Insurance Guaranty Associations who executed the Agreement (the “Signatory Guaranty Associations”). The Receiver and the Signatory Guaranty Associations may hereinafter be referred to collectively as the “Parties” or singularly as the “Party.”

**RECITALS**

WHEREAS, Lumbermen’s Underwriting Alliance (“LUA”), a Missouri-domiciled insurer, was found to be insolvent and ordered into liquidation by a “Judgment, Decree, and Final Order of Liquidation” (the “Order of Liquidation”) entered in the Circuit Court of Cole County, Missouri (“Receivership Court”) on May 23, 2016, Case No. 15AC-00224.

WHEREAS, the Order of Liquidation appointed John M. Huff, who at the time was the Director of the Missouri Department of Insurance, Financial Institutions and Professional Registration, and his successors in office, as LUA’s Liquidator. Chlora Lindley-Myers succeeded Mr. Huff as Director of the Missouri Department of Commerce and Insurance and was substituted in this action as the Receiver; and

WHEREAS, pursuant to the Order of Liquidation, the Receiver took possession and control over the assets of LUA to administer the same under the direction and orders of the Receivership Court before which the liquidation is pending and in accordance with the provisions of the Insurers Supervision, Rehabilitation and Liquidation Act, Mo. Rev. Stat. §§ 375.1150 *et seq.* (“Liquidation Act”); and

WHEREAS, the Receiver continues to collect from LUA Policyholders for amounts owed under their Policy Agreements as Large Deductible Reimbursements. Both the Receiver and the Guaranty Associations share a common interest in seeing that the collection process recovers to the full extent commercially practical all appropriate Large Deductible Reimbursements due from the Policyholders, regardless of whether the reimbursable WC claims were paid pre- or post-liquidation. The Parties desire to cooperate to achieve this result and therefore entered into the Agreement on October 1, 2016; and

WHEREAS, as set forth in the Agreement, with respect to Large Deductible Reimbursements due based upon WC claims and expenses paid after the entry of the Order of Liquidation, the Signatory Guaranty Associations which paid or will in the future pay such claims contend that they are entitled to receive as direct reimbursement the Large Deductible Reimbursements due from the Policyholders on such claims, regardless of whether paid by the Policyholder or if taken by LUA from Collateral (“post-liquidation Large Deductible Reimbursements”). The Receiver contends that the post-liquidation Large Deductible

Reimbursements are properly characterized as general assets of the estate of LUA, to be distributed *pro rata* to all creditors as set forth in the priority of claims hierarchy detailed in the Liquidation Act; and

WHEREAS, the Parties have negotiated in good faith in an effort to reach an agreement about entitlement to post-liquidation Large Deductible Reimbursements; and

WHEREAS, the Parties continue to disagree about entitlement to post-liquidation Large Deductible Reimbursements, but each Party has agreed to compromise and settle the dispute in order to avoiding costly litigation about the same; and

WHEREAS, the Parties' compromise is expressly limited to the facts as they exist in the LUA liquidation proceeding, and shall not be binding in any other receivership or under any other circumstances; and

WHEREAS, pursuant to Section 4.3 of the Agreement, certain provisions of the Agreement are hereby amended to effectuate the Parties' compromise agreement.

NOW, THEREFORE, for good and valuable consideration, and the mutual understandings and undertakings set forth herein, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby amend the Agreement as follows:

1. The last sentence in Section 2.4 is deleted.
2. Section 2.6 is deleted in its entirety and replaced with the following:

2.6 The Receiver shall periodically (but not less than annually) report to Signatory Guaranty Associations (or their designated representative) on her progress in her collection efforts as set forth in Section 2.5. The report shall be in the form set forth in Appendix B, or such other form as the Parties may agree upon in writing, and shall include the Receiver's current assessment of the likely outcome of the matter. The Report shall include a statement on an account-by-account basis of the Receiver's expenses for collection.

3. Section 2.7 is deleted in its entirety and replaced with the following:

2.7 All monies collected by the Receiver from a Policyholder as Large Deductible Reimbursements on post-liquidation claims paid by Signatory Guaranty Associations shall be accounted for as follows: The Receiver will deduct Expenses, as provided in Section 2.8, from post-liquidation Large Deductible Reimbursements. The remaining post-liquidation Large Deductible Reimbursements shall be divided 50/50, with 50% considered a general asset of the LUA estate and 50% disbursed as direct reimbursements to the Signatory Guaranty Associations that paid the underlying claim rather than as general assets of the LUA estate. The Receiver will hold the Signatory Guaranty Associations' funds until disbursed pursuant to the terms of this Agreement or by order of the Receivership Court, and such Signatory Guaranty Association funds shall not be used for any other purpose during the term of this Agreement.

4. Section 2.7.1 is deleted in its entirety.

5. Section 2.7.2 is deleted in its entirety and replaced with the following:

2.7.2 Subject to any other applicable terms of this Agreement, and on at least an annual basis, the Receiver will calculate the total amount of post-liquidation Large Deductible Reimbursements the Receiver actually collected from the Policyholders. The Receiver will subtract Expenses from the total amount actually collected. The remaining amount (the “Disbursement Amount”) will be disbursed as follows: 50% of the Disbursement Amount will be considered a general asset of the LUA estate, and 50% of the Disbursement Amount will pass through directly to the Signatory Guaranty Association(s) that paid the underlying claims. For those Signatory Guaranty Associations that were overpaid prior to execution of the Amendment of this Agreement, the Receiver shall apply the portion of the Disbursement Amount due that Signatory Guaranty Association to the Overpayment amount.

6. Section 2.7.3 is deleted in its entirety and replaced with the following:

2.7.3 The accounting of the Disbursement Amount, including reimbursement mechanisms and processes, will be set forth in Appendix C as agreed by the parties within 60 days of court approval of this Amendment to the Agreement. The reimbursement mechanism and process to be set forth in Appendix C shall include, but not be limited to, the frequency of payments, reporting and payment schedules, a mechanism for allocation of payments, reconciliation of payments, and claw backs of payments.

7. Section 2.8 is deleted in its entirety and replaced with the following:

2.8 The reasonable costs of collection (“Expenses”) will be charged against the post-liquidation Large Deductible Reimbursements.

8. Section 2.11 is deleted in its entirety.

9. Section 2.12 is deleted in its entirety and replaced with the following:

2.12 The Parties will enter into a binding written agreement, in the form attached hereto as Appendix D, in which they agree that 50% of the post-liquidation Large Deductible Reimbursements shall be treated as a general asset of the LUA estate and 50% of the post-liquidation Large Deductible Reimbursements shall inure to the benefit of Signatory Guaranty Associations as direct reimbursements rather than as general assets of the LUA estate. To the extent the Receiver has disbursed an amount greater than 50% of the post-liquidation Large Deductible Reimbursements to a Signatory Guaranty Association (an “Overpayment”), such Overpayment shall be offset by the Disbursement Amount due the Signatory Guaranty Association. If the Disbursement Amount due a Signatory Guaranty Association is not adequate to offset the entire Overpayment, such Overpayment is considered an early access payment under the early access provisions of the Liquidation Act. The post-liquidation Large Deductible Reimbursements disbursed to Signatory Guaranty Associations as direct reimbursements rather than as general assets of the LUA estate shall reduce the gross claims of the Signatory Guaranty Associations to the extent of such distribution, and the Receiver shall not take credit for or other consideration of such disbursed post-liquidation Large Deductible Reimbursements when determining the final distribution of estate assets to the Signatory Guaranty Associations.

10. Section 4.1 is deleted in its entirety and replaced with the following:

4.1 In the event the Agreement is terminated pursuant to its terms, any obligations of the Parties existing as of the date of termination of this Agreement shall survive until satisfied; including but not limited to LUA's obligation under this Agreement to reimburse the appropriate Signatory Guaranty Associations for any claims paid on policies within the scope of this Agreement prior to the termination date. The foregoing notwithstanding, Sections 2.3, 2.8, 2.10, 2.12, and all parts of Section 4 shall survive indefinitely.

11. Section 4.10 is deleted in its entirety and replaced with the following:

4.10 Any notices and all other matters of communications to or from the Parties concerning this Agreement shall be transmitted by electronic mail with receipt confirmed or sent by certified or registered mail, return receipt requested and obtained, or by overnight delivery service, addressed as follows:

Bruce Baty, Special Deputy Receiver  
Lumbermen's Underwriting Alliance in Receivership  
Bryan Cave Leighton Paisner LLP  
1200 Main Street, Suite 3800  
Kansas City, MO 64105

With Copy To:

Missouri Department of Commerce and Insurance  
Receivership Counsel  
P.O. Box 690  
Jefferson City, MO 65102-0690

And to:

National Conference of Insurance Guaranty Associations  
300 N. Meridian St., Suite 1020  
Indianapolis, IN 46204  
Attn: John Blatt

With Copy To:

Missouri Property & Casualty Insurance Guaranty Association  
994 Diamond Ridge, Suite 102  
Jefferson City, MO 65109  
Attn: Tamara Kopp, Executive Director

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AGREED AS TO SUBSTANCE AND FORM:

**LUMBERMEN'S UNDERWRITING ALLIANCE IN RECEIVERSHIP**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Bruce Baty, Special Deputy Receiver,  
on behalf of Chlora Lindley-Myers, Receiver

AGREED AS TO SUBSTANCE AND FORM:

**GUARANTY ASSOCIATION**

Guaranty Association Name: \_\_\_\_\_

By: \_\_\_\_\_ Date: \_\_\_\_\_

PRINT NAME: \_\_\_\_\_

Title: \_\_\_\_\_

**Amended APPENDIX B**

<u>Claim #</u>	<u>State</u>	<u>GA/Fund</u>	<u>Loss Billed</u>	<u>LAE Billed</u>	<u>Total Billed</u>	<u>Total Collected</u>	<u>Uncollected</u>	<u>Recovered</u>	<u>Administrative Expense</u>	<u>50% Fund Payment</u>	<u>Total Fund Payment</u>	<u>Comments</u>
<b>TOTALS</b>			-	-	-	-	-	-	-	-	-	
Prior Distribution at 80%			-									
Prior Distribution at 50%			-									
Overpayment			-									
2021 50%			-									
<b>Total Fund Payment</b>			-									

## *Amended Appendix C*

The terms used in Appendix C shall have the same meaning assigned to them by the Agreement Regarding the Collection of Policyholders Large Deductible Policy Obligations in the Liquidation of Lumbermen's Underwriting Alliance (the "Agreement"), to which this document is attached.

The Guaranty Associations pursuant to section 2.4 of the Agreement are required to report to the Receiver all claims within the scope of the Agreement in UDS format every 90 days. Any issue that the Receiver shall have with regard to the accuracy of the UDS reporting shall be reported in writing to the reporting Guaranty Association in reasonable detail as soon as practicable.

The Receiver will, within 45 days after the quarter-end (the "Billing Date"), bill insureds directly for the reimbursement of deductibles (the "Policyholder Billings"). If the Receiver is unable to collect from a particular insured within 90 days of the Billing Date in whole or in part the Policyholder Billings, the Receiver will draw down as necessary and as permitted by the Policy Agreements any collateral held for the insured to satisfy the insured's obligations to pay post-liquidation Large Deductible Reimbursements, unless the insured has a legitimate dispute which requires resolution, or has proven an error which requires an offset correction against future billings.

Per Section 2.1. of the Amended e Agreement, the Parties agree to divide equally the post-liquidation Large Deductible Reimbursements effective from and after the date of the Liquidation Order ("Settlement"). Fifty percent of the post-liquidation Large Deductible Reimbursements will be characterized as a direct reimbursement to the Signatory Guaranty Associations. The other fifty percent of the post-liquidation Large Deductible Reimbursements will be characterized as general assets of the estate of LUA, to be distributed pro rata to all creditors as set forth in the priority of claims hierarchy detailed in the Liquidation Act. Billing, collection, reporting and reconciliation to Signatory Guaranty Associations will all be on a per-claim basis. Signatory Guaranty Associations, as a part of UDS reporting, report on a claim-by-claim basis claim payments made under Large Deductible Policies. The Receiver in turn will bill and collect the post-insolvency Large Deductible Reimbursements on a claim-by-claim basis, and will remit to individual Signatory Guaranty Associations those Reimbursements on a claim-by-claim basis, and will provide to the Signatory Guaranty Associations annually a detailed accounting on a claim-by-claim basis with respect to the claims each Signatory Guaranty Association paid. The detailed claims reimbursement report will specify by claim the amount paid by the Signatory Guaranty Association, the amount billed, collected, unrecoverable, administrative expenses, outside legal or other collection expenses, and remitted to a particular Signatory Guaranty Association as Reimbursements, as well as prior overpayments and reconciliation of such overpayments to the Signatory Guaranty Association.

The Receiver will provide an explanation in reasonable detail in the claims reimbursement report when it is unable to either (i) fully collect the Insured Billing on a particular claim, or (ii) is unable to remit the full amount of the Large Deductible Reimbursement for that claim. Guaranty Fund Reimbursements will be based upon actual collections on individual claims, except in those

situations where the Receiver is required to draw down collateral to collect from a particular Policyholder. With regard to the collateral draws, all claims against the collateral shall be paid in the order received and no claim of the Receiver shall supersede any other claim against the collateral. Claims that are validly asserted against the collateral shall be satisfied in the order in which such claims are received by the Receiver; except that, if more than one creditor has a valid claim against the same collateral and the available collateral, along with billing collection efforts and to the extent that the collateral is subject to other known secured obligations, are together insufficient to pay each creditor in full, then the Director as Liquidator shall prorate payments to each creditor based upon the relationship the amount of claims each creditor has paid bears to the total of all claims paid by all such creditors.

All distributions of post-liquidation Large Deductible Reimbursements made pursuant to the Agreement shall be subject to an appropriate claw-back by the Receiver, as appropriately necessary to effectuate sections 2.4 and 2.12 of the Agreement, or as otherwise agreed by the parties. In circumstances where such a claw-back is appropriate under the terms of the Agreement, the Guaranty Associations agree to pay back the amounts requested within 60 days of receipt of a written request from the Receiver, providing in reasonable detail the basis for the request and any related accounting. If the Guaranty Association must make an assessment of its member insurers to fund the claw-back, then the amounts requested will be due 120 days from receipt of notice. Any disputes with respect to any such claw-backs shall be resolved by the Receivership Court, and any appeals therefrom.

## APPENDIX D

### **COMPROMISE SETTLEMENT AGREEMENT REGARDING THE COLLECTION OF POLICYHOLDERS' LARGE DEDUCTIBLE POLICY OBLIGATIONS IN THE LIQUIDATION OF LUMBERMEN'S UNDERWRITING ALLIANCE**

THIS COMPROMISE SETTLEMENT AGREEMENT ("Settlement Agreement") is made effective this \_\_\_\_ day of December 2021, by and among Chlora Lindley-Myers, Director, Missouri Department of Commerce and Insurance, acting in her capacity as statutory Receiver ("Receiver")<sup>1</sup> of Lumbermen's Underwriting Alliance ("LUA"), and the State Insurance Guaranty Associations executing this Agreement (the "Signatory Guaranty Associations") (a list of Signatory Guaranty Associations that signed the Agreement is Attached hereto as Exhibit A). The Receiver and the Signatory Guaranty Associations may hereinafter be referred to collectively as the "Parties" or singularly as the "Party."

#### RECITALS

WHEREAS, LUA, a Missouri-domiciled insurer, was found to be insolvent and ordered into liquidation by a "Judgment, Decree, and Final Order of Liquidation" (the "Order of Liquidation") entered in the Circuit Court of Cole County, Missouri ("Receivership Court") on May 23, 2016, Case No. 15AC-00224.

WHEREAS, the Order of Liquidation appointed John M. Huff, who at the time was the Director of the Missouri Department of Insurance, Financial Institutions and Professional Registration and his successors in office, as LUA's Liquidator and appointed Bruce Baty as the Special Deputy Receiver. Chlora Lindley-Myers succeeded Mr. Huff as Director of the Missouri Department of Commerce and Insurance and was substituted in this action as the Receiver.

WHEREAS, pursuant to the Order of Liquidation, the Receiver took possession and control over the assets of LUA to administer the same under the direction and orders of the Receivership Court before which the liquidation is pending and in accordance with the provisions of the Insurers Supervision, Rehabilitation and Liquidation Act, Mo. Rev. Stat. §§ 375.1150 *et seq.* ("Liquidation Act").

WHEREAS, under the Liquidation Act, the Receiver has the duty to collect all debts and monies due the estate, and claims belonging to LUA, and the authority to prosecute suits or other proceedings to collect such debts or monies, and to distribute such monies.

WHEREAS, LUA issued policies of worker's compensation ("WC") insurance, including policies containing Paid Loss Retrospective Rating Plan and Large Deductible Payment Plan agreements as further described below, to its policyholders ("Policyholders"), which included Professional Employer Organizations ("PEOs") or temporary staffing

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<sup>1</sup> References to "Receiver" in this Settlement Agreement shall be understood to include the Special Deputy Receiver.

companies.

WHEREAS, the rights and responsibilities of LUA and its Policyholders with respect to the WC insurance policies were set forth in the insurance policies/endorsements and their Paid Loss Retrospective Rating Plan and Large Deductible Payment Plan agreements (collectively referred to hereafter as their "Policy Agreements").

WHEREAS, upon the entry of the Order of Liquidation and in accordance with certain state statutes, certain state guaranty associations (the "Guaranty Associations") have assumed responsibility for the administration and payment of certain statutorily defined "Covered Claims" under the Policy Agreements.

WHEREAS, under the terms of their Policy Agreements, the Policyholders assumed certain financial responsibility for funding and/or reimbursing LUA for amounts that LUA paid as WC claims and expenses, subject to the particular Policyholder's per-claim/aggregate deductible limits ("Large Deductible Reimbursements").

WHEREAS, LUA's Policy Agreements typically provided that each Policyholder's anticipated deductible reimbursement obligations were to be secured by various collateral arrangements, including deposits made by the Policyholder and maintained by LUA. Pursuant to these provisions, the Receiver has a substantial amount of collateral in her direct or indirect custody or control (the "Collateral"), to be used as security to ensure payment if LUA Policyholders fail to perform their reimbursement obligation to pay Large Deductible Reimbursements when due.

WHEREAS, the Receiver continues to collect from LUA Policyholders for amounts owed under their Policy Agreements as Large Deductible Reimbursements. Both the Receiver and the Guaranty Associations share a common interest in seeing that the collection process recovers to the full extent commercially practical all appropriate Large Deductible Reimbursements due from the Policyholders, regardless of whether the reimbursable WC claims were paid pre- or post-liquidation. The Parties continue to cooperate to achieve this result.

WHEREAS, with respect to Large Deductible Reimbursements due based upon WC claims and expenses paid after the entry of the Order of Liquidation, the Guaranty Associations which paid or will in the future pay such claims contend that they are entitled to receive as direct reimbursement the Large Deductible Reimbursements collected from the Policyholders on such claims, regardless of whether paid by the Policyholder or if taken by LUA from Collateral ("post-liquidation Large Deductible Reimbursements"). The Receiver contends that the Large Deductible Reimbursements are properly characterized as general assets of the estate of LUA, to be distributed *pro rata* to all creditors as set forth in the priority of claims hierarchy detailed in the Liquidation Act.

WHEREAS, in accordance with the Agreement Regarding the Collection of Policyholders Large Deductible Policy Obligations in the Liquidation of Lumbermen's Underwriting Alliance (the "Agreement"), the Receiver and the Signatory Guaranty Associations agreed to negotiate in

good faith in an effort to reach an agreement about entitlement to post-liquidation Large Deductible Reimbursements to avoid costly litigation that would ultimately reduce the limited amount of estate assets that would otherwise be distributed to all creditors.

WHEREAS, by executing this Settlement Agreement, the Parties, acting in good faith and through joint cooperation to meet the requirements of the Agreement, have engaged in good faith discussions to resolve the characterization of and ultimate entitlement to post-liquidation Large Deductible Reimbursements.

WHEREAS, the Parties do not agree about entitlement to post-liquidation Large Deductible Reimbursements, but each Party has agreed to compromise and settle the dispute in order to avoiding costly litigation about the same.

WHEREAS, the Parties' compromise is expressly limited to the facts as they exist in the LUA liquidation proceeding, and shall not be binding in any other receivership or under any other circumstances.

NOW, THEREFORE, for good and valuable consideration, and the mutual understandings and undertakings set forth herein, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

### **1. SCOPE OF AGREEMENT**

This Settlement Agreement resolves the characterization of and ultimate entitlement to post-liquidation Large Deductible Reimbursements in the LUA liquidation proceeding.

### **2. TERMS OF AGREEMENT**

2.1 The Parties agree to divide equally the post-liquidation Large Deductible Reimbursements effective from and after the date of the Liquidation Order ("Settlement"). Fifty percent of the post-liquidation Large Deductible Reimbursements will be characterized as a direct reimbursement to the Signatory Guaranty Associations. The other fifty percent of the post-liquidation Large Deductible Reimbursements will be characterized as general assets of the estate of LUA, to be distributed *pro rata* to all creditors as set forth in the priority of claims hierarchy detailed in the Liquidation Act.

2.2 The Parties acknowledge that the consideration set forth in this Settlement Agreement, which includes, the equal distribution of the post-liquidation Large Deductible Reimbursements is a full Settlement and by signing this Settlement Agreement, and accepting the consideration provided herein and the benefits of it, they are giving up forever any right to seek any other further relief from the other Party.

2.3 The Parties acknowledge that the Settlement is agreed upon as a compromise and final settlement of a disputed issue outlined in the Agreement and that the Settlement is not and may not be construed as an admission of ultimate ownership of the asset by either Party.

### **3. MISCELLANEOUS PROVISIONS**

3.1 Each of the Parties has jointly participated in the negotiation and drafting of this Settlement Agreement. In the event of any ambiguity or a question of intent or interpretation arises, this Settlement Agreement shall be construed as if drafted jointly by each of the Parties hereto and no presumptions or burdens of proof shall arise favoring any Party by virtue of the authorship of any of the provisions of this Settlement Agreement.

3.2 The Agreement and all Amendments thereto, including this Settlement Agreement and all other Appendix to the Agreement, constitute the entire agreement among the Parties hereto with respect to the subject matter of the Agreement and supersedes and replaces all prior representations and agreements with respect to the subject matter of the Agreement. The Agreement may not be altered, modified or otherwise changed in any respect except in writing and duly executed by all Parties and approved by the Receivership Court.

3.3 This Settlement Agreement may be executed in counterparts, any or all of which may contain the signature of only one of the Parties, and all of which together shall be considered a single original document.

3.4 By signing below, each Party warrants and represents that the person signing this Settlement Agreement on its behalf has authority to bind that Party and that the Party's execution of this Settlement Agreement is not in violation of any by-law, covenants, and/or other restrictions placed upon them by their respective entities.

3.5 This Settlement Agreement shall be deemed to have been entered in and shall be construed and enforced in accordance with the laws of the State of Missouri, without giving effect to its choice of law statutes or case law. The Parties agree that the exclusive venue and jurisdiction to resolve any disputes between them arising from or relating to this Settlement Agreement shall be the Receivership Court; provided, however, that by entering into this Settlement Agreement, the Signatory Guaranty Associations are stipulating only to the proper jurisdiction, venue and choice of law solely for the resolution of any matters with regard to this Settlement Agreement and they do not by virtue of this Settlement Agreement or the actions taken pursuant to it submit to the general or specific jurisdiction of the Receivership Court for any other purpose.

3.6 The recitals in this Settlement Agreement are hereby incorporated and shall be considered part of this Settlement Agreement.

3.7 No agency, authority, association, estate, entity or person which is not a party to this Settlement Agreement, as evidenced by the signatures to this Settlement Agreement, shall have any rights hereunder and the only intended beneficiaries of this Settlement Agreement are the parties which have signed it.

3.8 Any notices and all other matters of communications to or from the Parties concerning this Settlement Agreement shall be transmitted by electronic mail with receipt confined or sent by certified or registered mail, return receipt requested and obtained, or by overnight delivery service, addressed as follows:

Bruce Baty, Special Deputy Receiver  
Lumbermen's Underwriting Alliance in Receivership

Bryan Cave Leighton Paisner LLP  
1200 Main Street, Suite 3800  
Kansas City, MO 64105  
Email: bruce.baty@bclplaw.com

With Copy To:

Missouri Department of Commerce and Insurance  
Receivership Counsel  
P.O. Box 690  
Jefferson City, MO 65102-0690  
Shelley.Forrest@insurance.mo.gov

And To:

National Conference of Insurance Guaranty Associations  
John Blatt, General Counsel  
300 N. Meridian St., Suite 1020  
Indianapolis, IN 46204  
Email: jblatt@ncigf.org

With Copy To:

Missouri Property & Casualty Insurance Guaranty Association  
Tamara Kopp, Executive Director  
2210 Missouri Blvd.  
Jefferson City, MO 65109  
Email: tkopp@mo-iga.org

3.9 The Receiver shall, upon execution of this Settlement Agreement by all Signatory Guaranty Associations which are paying claims for which they will seek reimbursement in the LUA liquidation and approval by the NCIGF Coordinating Committee, apply for approval of this Settlement Agreement by the Receivership Court. This Settlement Agreement shall only become effective upon the approval of the Receivership Court.

3.10 In no event will any Party be liable for lost profits, or special, incidental, consequential or punitive damages whether such liability is asserted on the basis of contract, tort (except for willful misconduct) or otherwise even if advised of the possibility of such damages.

[SIGNATURES OF THE PARTIES ON FOLLOWING PAGES]

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

Lumbermen's Underwriting Alliance in Receivership

Bruce Baty, Special Deputy Receiver

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_

[THIS SECTION INTENTIONALLY LEFT BLANK]

[Insert Name of Guaranty Association]

“Signatory Guaranty Association”

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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**EXHIBIT A - SIGNATORIES TO THE AGREEMENT**

1. Alabama Insurance Guaranty Association
2. Arkansas Property & Casualty Guaranty Fund
3. Arizona Property & Casualty Insurance Guaranty Fund
4. California Insurance Guarantee Association
5. Colorado Insurance Guaranty Association
6. Connecticut Insurance Guaranty Association
7. Delaware Insurance Guaranty Association
8. Florida Workers' Compensation Insurance Guaranty Association
9. Georgia Insurers Insolvency Pool
10. Idaho Insurance Guaranty Association
11. Illinois Insurance Guaranty Fund
12. Indiana Insurance Guaranty Association
13. Iowa Insurance Guaranty Association
14. Kansas Insurance Guaranty Association
15. Kentucky Insurance Guaranty Association
16. Louisiana Insurance Guaranty Association
17. Massachusetts Insurers Insolvency Fund
18. Maryland Property & Casualty Insurance Guaranty Corporation
19. Michigan Property & Casualty Guaranty Association
20. Minnesota Insurance Guaranty Association
21. Mississippi Insurance Guaranty Association
22. Missouri Property & Casualty Insurance Guaranty Association
23. Montana Insurance Guaranty Association
24. Nebraska P&L Insurance Guaranty Association
25. North Carolina Insurance Guaranty Association
26. New Hampshire Insurance Guaranty Association
27. New Jersey P-L Insurance Guaranty Association
28. Nevada Insurance Guaranty Association
29. New York Liquidation Bureau
30. Oklahoma Property & Casualty Insurance Guaranty Association
31. Oregon Insurance Guaranty Association
32. Pennsylvania Workers Compensation Security Fund
33. Rhode Island Property & Casualty Insurance Guaranty Association
34. South Carolina Property & Casualty Insurance Guaranty Association
35. South Dakota Insurance Guaranty Association
36. Tennessee Insurance Guaranty Association
37. Texas Property & Casualty Insurance Guaranty Association
38. Utah Property & Casualty Insurance Guaranty Association
39. Virginia Property & Casualty Insurance Guaranty Association
40. Vermont Property & Casualty Insurance Guaranty Association
41. Washington Insurance Guaranty Association
42. Wisconsin Insurance Security Fund
43. West Virginia Insurance Guaranty Association
44. Wyoming Insurance Guaranty Association