



2. Pursuant to the Order of Liquidation 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.

3. Pursuant to the Liquidation Order and the Liquidation Act, the Liquidator was directed 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.

4. Pursuant to Mo. Rev. Stat. § 375.1220, the Liquidator has commenced her review of claims duly filed in the liquidation.

5. Mo. Rev. Stat. § 375.1218, sets forth the priority of distribution of claims from the Estate and requires that “[e]very 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. No claim by a shareholder, policyholder or other creditor shall be permitted to circumvent the priority class through the use of equitable remedies.”

6. Class 1 claims are for “[t]he costs and expenses of administration during rehabilitation and liquidation . . .” *Id.* § 375.1218.1. The Liquidator has reserved an amount sufficient to ensure all Class 1 claims are paid in full.

7. Class 2 claims are for “[a]ll claims under policies . . . including all claims of a life and health insurance guaranty association or foreign guaranty association which covers claims of life and health insurance policies, relating to the handling of such claims.” *Id.* § 375.1218.2.

8. This First Interim Distribution is proposed only for Class 2 claims because, at this point, it does not appear that sufficient assets will be available to make any distribution on claims with priority below Class 2.

9. This First Interim Distribution does not include a distribution to state Guaranty Associations (“GAs”) because, to date, the GAs have received a total of \$40,952,231 through early access payments pursuant to Mo. Rev. Stat. § 375.1205 (\$17,438,332.32), and payments made to certain GAs pursuant to the Joint Collection Agreement (“JCA”) (\$23,513,898.71).

10. The Liquidator proposes to make this First Interim Distribution to Non-GA Class 2 claimants whose Proof of Claim (“POC”) has been approved in full or in part by the Liquidator, and who have received a Notice of Determination (“NOD”) from the Liquidator.

11. 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 the most recent semi-annual report as of December 31, 2020, on April 2, 2021.

12. 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, 2020 were \$137,132,848. Total estimated liabilities were \$386,716,884, leaving an estimated net deficit of \$131,466,065. As of December 31, 2020, the estimated reserve for Class 1 claims was \$20,004,624. Investment maturities in April 2021, will generate available cash and cash equivalents of approximately \$8.4 million, which will provide sufficient cash for continued payment in full of all Class 1 claims and for this First Interim Distribution on Non-GA Class 2 claims.

13. The deadline for filing POCs was set at May 24, 2017. As of April 1, 2021, the Liquidator has received 1,393 POCs.

14. The Liquidator has preliminarily classified 1,258 POCs as Class 2 claims. As of April 1, 2021, LUA had issued Class 2 NODs for 699 of the 1,258 Class 2 claims. The Liquidator will issue at least 123 additional NODs on or around May 3, 2021.

15. Of the 822 NODs issued, or to be issued on May 3, 2021, the Liquidator has allowed 64 POCs – in full or in part and/or as contingent – as Class 2 claims; 59 of which are eligible for the First Interim Distribution (“Distribution Claimants”).<sup>1</sup> A listing of the Distribution Claimants, including the amount allowed, is attached hereto as Exhibit A.

16. Following LUA’s liquidation, LUA transferred all workers’ compensation claims to the appropriate state GA, which assumed the obligations to administer and pay workers’ compensation claims filed against LUA insureds. Certain GAs denied responsibility for the claims for statutory reasons. The GAs that denied claims for statutory reasons either transferred those claims to the insured, who then assumed the obligations to administer and pay those workers’ compensation claims, or has been administering the claims and billing the insured for those claims.

17. Several of the insureds whose claims were denied by GAs for statutory reasons filed POCs after the May 24, 2017 deadline for submitting POCs; however, the Liquidator has determined that, pursuant to Mo. Rev. Stat. § 375.1206.3, she will consider these POCs contingent Class 2 claims under Mo. Rev. Stat. § 375.1218 because the insureds have been either administering and paying the claims, or reimbursing the GA that is administering and paying the claims, since the date of liquidation.

---

<sup>1</sup> Five of the Non-GA Class 2 contingent claims are not yet eligible for distribution.

### Asset Distribution Calculation

18. Lumbermen's staff and consultants completed an asset distribution analysis that projects inflow and outflow in future years for the purpose of estimating ultimate distribution rates to determine the appropriate level for the First 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, potential early access distributions to GAs (including JCA payments) and interim asset distributions to Distribution Claimants.

19. The Liquidator has identified two categories of Non-GA Class 2 approved claims: (a) contingent claims: insureds who are paying claims under their workers' compensation policy directly or reimbursing a GA for claim payments, because the claims were rejected for statutory reasons by the GA, and (b) fixed claims: claims allowed in full or in part for a sum certain.

20. The Liquidator's analysis employs a conservative scenario in order to adequately protect all Class 2 claimants, including those who have and those who have not received a NOD from the risk of disproportionate payouts due to interim distribution overpayments, as well as payments made or that may be made to the 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, 2020.

21. 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, including:

- a. Variability of the ultimate dollar amount of claims incurred and related reinsurance recoverables on those claims;

- b. Collectability of ceded reinsurance;
- c. Timing of claim payments by GAs, claim determinations by LUA and timing of associated reinsurance collections;
- d. Extent, timing and cost (discount) of reinsurance commutations;
- e. Future operating expenses of LUA;
- f. Future investment income on invested assets;
- g. Potential additional distributions of JCA payments and early access funds to GAs; and
- h. Priority of classification of certain types of disputed NODs.

22. In order to assess the impact of various assumptions on the ultimate distribution percentage, the analysis considered the possibility of:

- a. Higher dollar amounts of incurred claims;
- b. Lower recovery of deductibles;
- c. Lower dollar amounts of claims recoverable under reinsurance;
- d. Lower investment income;
- e. Higher operating expenses;
- f. Slower and/or lower levels of reinsurance collections; and
- g. Commutation costs (discounts).

#### **Proposal for First Interim Distribution**

23. Based on the scenarios produced by the asset distribution analysis and considering the factors set forth in paragraphs 21 and 22 above, the Liquidator is proposing an initial distribution percentage of 40% for the NOD allowed amounts as follows:

- a. Non-GA Class 2 POCs allowed in full or in part for a fixed amount: 40% of the allowed amount of the POC; and
- b. Contingent Non-GA 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.

24. Based on this distribution calculation, a 40% distribution would result in an initial interim distribution to these Non-GA Class 2 claimants totaling approximately \$6.8 million.

25. The Liquidator believes that the amount of the proposed First 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.

26. The Liquidator proposes that checks not be issued for a *de minimus* amount of less than \$10.00 per claimant. Claimant who have received more than one NOD will receive only one check for their multiple NODs and thus will not be affected by this *de minimus* threshold, if their multiple NODs equal or exceed \$10.00. At the time of this filing, no eligible Distribution Claimants listed on Exhibit A would be affected by this proposal. In the event the *de minimus* threshold applies to a claimant in the future, a check will be issued to the claimant if their distribution amount is increased beyond the threshold *de minimus* amount in the future because they receive additional NODs or an amended NOD, or because the distribution percentage is increased. In any event, this *de minimus* threshold will not apply to the final distribution of LUA assets and all claimants will receive the ultimate distribution percentage, even if the distribution amount is less than \$10.00.

### Notice of Motion

27. The Liquidator shall provide written notice of this Motion to all Distribution Claimants listed in Exhibit A at the address listed in each Distribution Claimant's POC.

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

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

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

a) Approving a First Interim Distribution Percentage for 40% of NODs allowed amounts for Non-GA Class 2 claimants as follows: (1) Non-GA Class 2 POCs allowed in full or in part for a fixed amount: 40% of the allowed amount; and (2) Contingent Non-GA 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.

b) Directing the Liquidator to issue checks based on the First Interim Distribution to Non-GA Class 2 claimants whose POCs are approved subsequent to this First Interim Distribution;

c) Directing that, for this First 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.

d) Affirming and approving in all respects the conduct of the Liquidator, her employees, agents and counsel in connection with the First Interim Distribution requested by this Motion.

Respectfully submitted,

BRYAN CAVE LEIGHTON PAISNER, LLP

/s/ Jodi M. Adolf

Bruce E. Baty, MO Bar # 32386

Jodi M. Adolf. Mo Bar # 54645

1200 Main Street, Suite 3800

Kansas City, MO 64105

(816) 374-3200 telephone

(816) 374-3300 facsimile

[bruce.baty@bcplaw.com](mailto:bruce.baty@bcplaw.com)

[jodi.adolf@bcplaw.com](mailto:jodi.adolf@bcplaw.com)

Attorney 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 26th day of April, 2021 using this Court's electronic filing system, which sends notification of filings to counsel of record.

/s/ Jodi M. Adolf

**Attorney for Plaintiff**

# Exhibit A

## Lumbermen's Underwriting Alliance in Liquidation - First Interim Distribution

	POC	POC Claimant	Approved POC	40% of Approved POC
1	1-00009	G4S Compliance & Investigations	\$613.00	\$245.00
2	1-00011	Kolb, Stewart & Associates, Inc.	\$3,215.75	\$1,286.30
3	1-00053	Nexus Specialty Hospital	\$19,418.65	\$7,767.46
4	1-00054	Nexus Specialty Hospital	\$15,311.13	\$6,124.45
5	1-00055	Nexus Specialty Hospital	\$1,385.82	\$554.33
6	1-00073	Encore Unlimited, LLC	\$1,215.57	\$486.23
7	1-00096	Magnolia Strong Group, Inc.	\$421.00	\$168.40
8	1-00097	Magnolia Strong Group, Inc.	\$209.00	\$83.60
9	1-00108	Shannon Cole Custom Case Management	\$1,182.10	\$472.84
10	1-00165	Meridian Investigative Group., Inc.	\$1,389.00	\$555.60
11	1-00224	Professional Court Reporters	\$255.00	\$102.00
12	1-00225	Professional Court Reporters	\$573.60	\$229.44
13	1-00226	Professional Court Reporters	\$960.80	\$384.32
14	1-00244	Roseburg Forest Products, Co.	\$2,950,045.00	\$1,180,018.00
15	1-00257	NuQuest	\$2,000.00	\$800.00
16	1-00258	NuQuest	\$1,200.00	\$480.00
17	1-00261	Veritext Corp dba Hahn & Bowersock	\$462.50	\$185.00
18	1-00263	Encore Unlimited, LLC	\$826.39	\$330.56
19	1-00284	Kindercare Learning Centers , inc.	\$170,453.16	\$68,181.26
20	1-00322	Carter Brothers Manufacturing Company, Inc.	\$6,540,975.44	\$2,616,390.18
21	1-00330	Nuzzo & Roberts LLC	\$1,641.80	\$656.72
21	1-00387	Aplin & Ringsmuth	\$1,763.46	\$705.38
22	1-00389	Caney Guest Home, Inc.	\$479,100.00	\$191,640.00
23	1-00461	Weyerhaeuser NR Company	\$4,200,000.00	\$1,680,000.00
24	1-00464	Cuneo, Black, Ward & Missler	\$438.39	\$175.36
25	1-00465	Cuneo, Black, Ward & Missler	\$103.20	\$41.28
26	1-00466	Cuneo, Black, Ward & Missler	\$42.88	\$17.15
27	1-00467	Cuneo, Black, Ward & Missler	\$38.80	\$15.52
28	1-00468	Cuneo, Black, Ward & Missler	\$383.80	\$153.52
29	1-00469	Cuneo, Black, Ward & Missler	\$445.00	\$178.00
31	1-00600	Performance Pallet Corp.	\$236,229.17	\$94,491.67
32	1-00842	BPM Lumber, LLC	\$1,002,507.00	\$401,002.80
33	1-00960	Pike Electric, LLC	\$112,653.30	\$45,061.32
34	1-00962	Gale Sutow & Associates	\$33.00	\$13.20
35	1-01054	Atlas Roofing Corporation	\$396,798.93	\$158,719.57
36	1-01087	Flahive, Ogden & Latson	\$300.00	\$120.00
37	1-01089	Flahive, Ogden & Latson	\$375.00	\$150.00
38	1-01090	Flahive, Ogden & Latson	\$707.00	\$282.80
39	1-01092	Flahive, Ogden & Latson	\$99.00	\$39.60
40	1-01093	Flahive, Ogden & Latson	\$114.90	\$45.96
41	1-01118	Maria Grant #379701	\$125,138.93	\$50,055.57
42	1-01119	Bradford & Barthel , LLP	\$231.00	\$92.40
43	1-01120	Bradford & Barthel, LLP	\$115.00	\$46.00
44	1-01121	Bradford & Barthel, LLP	\$115.00	\$46.00
45	1-01122	Bradford & Barthel, LLP	\$470.00	\$188.00
46	1-01123	Bradford & Barthel, LLP	\$127.50	\$51.00
47	1-01201	Ainsworth Engineered LLC	\$21,924.14	\$8,769.66
48	1-01380	Clayton Homes	\$229,846.96	\$91,938.78
49	1-01381	Aviagen Group	\$39,057.03	\$15,622.81
50	1-01382	Arrowhead Senior Living Community	\$16,841.88	\$6,736.75
51	1-01384	JRN, Inc.	\$60,557.26	\$24,222.90
52	1-01385	Kolbe & Kolbe Millwork Co., Inc.	\$19,939.95	\$7,975.98
53	1-01386	White Lily Foods/The J.M. Smucker Co.	\$56,574.76	\$22,629.90
54	1-01393	Blandin Paper Company	\$281,942.48	\$112,776.99
55	1-01395	Hunt Forest Products, LLC	\$4,326.08	\$1,730.43
56	1-01396	Yates Group, Inc. previously E-Z Mart Stores, Inc.	\$10,339.27	\$4,135.71
57	1-01397	Southworth Milton	\$37,234.57	\$14,893.83
58	1-01399	The Evangelical Lutheran Good Samaritan Society	\$78,209.79	\$31,283.92
59	1-01405	HT Hackney Co. - P.F.C. Inc.	\$7,238.44	\$2,895.38
		<b>TOTALS</b>	<b>\$17,135,504.58</b>	<b>\$6,854,201.83</b>