

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

CHLORA LINDLEY-MYERS, DIRECTOR,
DEPARTMENT OF INSURANCE, FINANCIAL
INSTITUTIONS AND PROFESSIONAL
REGISTRATION OF THE STATE OF MISSOURI.

Plaintiff,

v.

NATIONAL STATES INSURANCE COMPANY

Defendant.

Case No.: 10AC-CC00219

ORDER

COMES NOW Chlora Lindley-Myers, Director of the Missouri Department of Insurance, Financial Institutions and Professional Registration of the State of Missouri, in her capacity as Liquidator ("Liquidator") of National States Insurance Company ("National States" or the "Estate"), upon her "Motion for Approval of First Interim Distribution of Estate Assets" pursuant to Mo. Rev. Stat. § 375.1222 . The Court, being well and sufficiently advised in the premises, finds and concludes as follows:

THE COURT FINDS:

1. On April 1, 2010, this Court granted plaintiff's Petition for Rehabilitation, and appointed John M. Huff, who at the time was the Director of the Missouri Department of Insurance and his successors in office as Rehabilitator of National States.

2. On November 15, 2010, this Court entered a Judgment, Decree and Order of Liquidation with Finding of Insolvency (the "Order of Liquidation") against National States. The Order of Liquidation found National States to be insolvent, terminated the rehabilitation proceedings, and placed National States into liquidation. The Court appointed John M. Huff, who at that time was the Director of the Missouri Department of Insurance, and his successors in

office, as the Liquidator of National States. Chlora Lindley-Myers has succeeded Mr. Huff as Director and has been substituted in this action as the Liquidator for National States.

3. Pursuant to Mo. Rev. Stat. § 375.1150, *et. seq.*, and the Liquidation Order, 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. The Liquidation Order set the bar date for filing Proofs of Claims (“POCs”) at November 15, 2011.

5. As of June 30, 2018, the Liquidator had received 412 POCs, three of which were withdrawn and five of which were submitted to affected SGAs for payment.

6. Pursuant to Mo. Rev. Stat. § 375.1220, the Liquidator has reviewed all claims duly filed in the liquidation.

7. Pursuant to Mo. Rev. Stat. § 375.1218, [t]he priority of distribution of claims from the insurer's estate shall be in accordance with the order in which each class of claims is herein set forth. Moreover:

Every 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.

8. Under Missouri’s insurance liquidation scheme:
- a) **Class 1** claims are for “[t]he costs and expenses of administration during rehabilitation and liquidation . . .” *Id.* § 375.1218.1.
 - b) **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.

- c) **Class 3** claims are for “Claims of the United States government other than those claims included in class 2.” *Id.* § 1218.3.
- d) **Class 4** claims are for “[r]easonable compensation to employees for services performed to the extent that they do not exceed two months of monetary compensation and represent payment for services performed within one year before the filing of the petition for liquidation . . .” *Id.* § 1218.4.
- e) **Class 5** claims are for “[c]laims under nonassessable policies for unearned premiums or other premium refunds and claims of general creditors including claims of ceding and assuming companies in their capacity as such.” *Id.* § 1218.5.
- f) **Class 6** claims are for “claims of any state or local government except those under class 2 above. . . .” *Id.* § 1218.6.
- g) **Class 7** claims are for “[c]laims filed late or any other claims other than class 7 or 8 claims.” *Id.* § 1218.7.
- h) **Class 8** claims are for “[s]urplus or contribution notes, or similar obligations, . . .” *Id.* § 1218.8.
- i) **Class 9** claims are for “[t]he claims of shareholders or other owners in their capacity as shareholders.” *Id.* § 1218.9.

9. The Liquidator has reviewed all POCs filed with the Estate and determined that only one POC, the Omnibus POC filed by the National Association of Health and Life Guaranty Associations (“NOLHGA”) on behalf of the affected the State Guaranty Associations (“SGAs”), is (in part) a Class 2 claim.

10. The Liquidator has determined that the remaining 404 POCs are a priority below Class 2 (354 Class 5 claims; 23 Class 6 claims; 17 Class 7; and 10 Class 9 claims).

11. The Estate does not have assets sufficient to pay Class 2 claims in full; therefore, claims in the classes lower than Class 2 will not be further adjusted or paid.

12. On October 2, 2018, the Liquidator mailed to each claimant in the lower claim classes, by first class mail to the address listed on each POC, a Notice advising these claimants that (a) National States does not have sufficient assets to pay claims with a priority below Class 2, (b) their POC had been assigned a priority class below Class 2, and (c) allowing the claimant 60 days to object to the Liquidator's priority determination. Notice of the Liquidator's determination that claimants in priority classes below Class 2 will not be paid is also posted to the National State's webpage. *See* www.nstates.com.

13. Missouri law provides that "[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." Mo. Rev. Stat. § 375.1222.

14. The Liquidator has determined that having completed the tasks of recovering Estate Assets and determining POCs, it is appropriate to make this First Interim Distribution of Estate Assets to the Class 2 claimants.

15. The NOLHGA Omnibus POC, filed on behalf of all SGAs, which was last updated June 30, 2017, seeks a total of \$140,606,015. The Liquidator has determined that \$130,600,006 of the amount claimed, consisting of net claims funded (\$49,857,291), estimated reserves (\$71,421,584) and Allocated Loss & Adjustment Expense (\$9,321,131) is a proper Class 2 claim pursuant to § 375.1218.2. The remaining portion of the claim consists of Unallocated Loss & Expense (\$10,006,009), which is a Class 5 claim.

16. The Liquidator files semi-annual reports with the Court, which provide detailed information regarding the financial condition of National States. The most recent report as of June 30, 2018, was filed on October 4, 2018.

17. The total estimated assets for National States as of June 30, 2018 were \$13,269,411. Total estimated liabilities were \$155,598,121, leaving an estimated net deficit of \$142,328,710. The cash on hand, as of June 30, 2018, totaled \$8,653,957 and will provide sufficient cash for continued payment in full of all Class 1 claims and for this First Interim Distribution on Class 2 claims.

13. Based on the total assets and liabilities, and the POCs received, the Liquidator proposes an initial distribution percentage of 3.8% for the Class 2 claim received. This results in a First Interim Distribution of \$4,962,800.23.

14. In the event that a claimant objects to the Liquidator's classification of a POC, and the POC is subsequently reclassified as a Class 2 claim, and the POC has more than a de minimus value, the Liquidator shall also distribute 3.8% of any allowed amount to the affected claimant.

15. The Liquidator believes that the amount of the proposed First Interim Distribution of Estate Assets fulfills her duty to "pay distributions in a manner that will assure the proper recognition of priorities and a reasonable balance between the expeditious completion of the liquidation and the protection of unliquidated and undetermined claims . . ." as require by Mo. Rev. Stat. § 375.1222

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

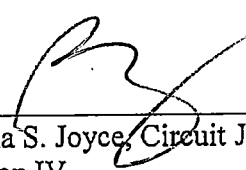
a) A First Interim Distribution Percentage of 3.8% is approved for Class 2 claims, the current sole Class 2 claimant being NOLHGA on behalf of the SGAs;

b) The Liquidator shall wire transfer or issue a check based on the First Interim Distribution Percentage to NOLHGA on behalf of the SGAs within ten (10) calendar days of issuance of this Order;

c) The conduct of the Liquidator, her employees, agents and counsel in connection with the First Interim Distribution of Estate Assets is affirmed and approved in all respects; and

d) There is no just reason for delay and this Order constitutes a final judgment fully resolving all issues relating to the destruction of these records.

DATED: 10.15.18



Patricia S. Joyce, Circuit Judge
Division IV