

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 1,274 POCs as Class 2 claims. As of April 1, 2022, LUA had issued Class 2 Notice of Determinations (“NOD”) for 1,097 of the 1,257 Class 2 claims.

13. Of the 1,097 NODs issued, the Liquidator has allowed 118 POCs – in full or in part and/or as contingent – as Class 2 claims.¹ 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 hereto as Exhibit A.

Asset Distribution Calculation

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.

¹ 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, 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; and
- g. Priority of classification of certain types of disputed NODs.

18. 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 Second Interim Distribution

19. Based on the scenarios produced by the asset distribution analysis and considering the factors described above, and prior distributions, the Liquidator is proposing a second distribution that brings all Non-GA and GA claimants to a paid percentage of 50% of the 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.

20. Based on this distribution calculation, a 50% distribution would result in a second interim distribution totaling approximately \$3 million.

21. 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.

Notice of Motion

22. 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.

23. The Liquidator shall post a copy of this Motion on LUA’s website: www.lumbermensunderwritng.com.

24. 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 Second Interim Distribution Percentage for a total of 50% of NODs allowed amounts for Class 2 claimants 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; (2) Non-GA Contingent 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;

b) Directing the Liquidator to issue checks based on the Second Interim Distribution to the Distribution Claimants and GAs as set forth in Exhibit A;

c) Directing that, 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.

d) Affirming and approving in all respects the conduct of the Liquidator, her employees, agents and counsel in connection with the Second 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

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 20th day of April, 2022, using the Court's electronic filing system, which sends notification of filings to counsel of record.

/s/ Jodi Adolf
Attorneys for Plaintiff