

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In Re: Reliance Insurance Company :
in Liquidation :
: No. 1 REL 2001

IN RE: Liquidator’s Application for Approval of Final GA Omnibus Notices of Determination as of April 16, 2018

MEMORANDUM and ORDER

Before the Court is the Liquidator’s unopposed Application for Approval of Final GA Omnibus Notices of Determination as of April 16, 2018 (Application). The Liquidator’s Application is submitted pursuant to this Court’s prior orders addressing the administration of Guaranty Association (GA) claims (Order of November 19, 2007) and GA omnibus Proof of Claims (POCs) (Order of December 11, 2003), as well as Pa.R.A.P. 3784(a) and Section 545(a) of the Insurance Department Act of 1921 (Act),¹ 40 P.S. § 221.45(a), which require the Liquidator to present to the Court a report of the claims against the Reliance estate along with her recommendations. In her Application, the Liquidator seeks approval of the final omnibus class (a) and (b) Notices of Determination (NODs) that have been issued to the respective Property Casualty GAs included in the attached reports.² The objection period has expired and approval of the Application will finally resolve all

¹ Act of May 17, 1921, P.L. 789. Section 545, a part of Article V, was added by the Act of December 14, 1977, P.L. 280.

² In general, class (a) claims include the GA administrative expense claims incurred in handling loss claims; class (b) claims include loss claims paid by the GAs as well as the allocated loss adjustment expenses.

the class (a) and/or (b) claims submitted by the included GAs.³ The final omnibus NODs at issue include: (1) allowed amounts for class (a) or (b) claims previously approved by the Court for each GA; (2) allowed amounts for class (a) or (b) claims which are being submitted to the Court for approval for the first time in the present Application; (3) disallowed amounts for class (a) claims previously approved by the Court for each GA; and (4) disallowed amounts for class (a) claims which are being submitted to the Court for approval for the first time in the present Application.

In her Application, the Liquidator notes that the “final omnibus settlement of class (a) claims for each GA will obviate the need for future undisputed GA administrative expense reports which will no longer be submitted to the Court.” Application, ¶ 7. Further, in order to issue a final omnibus NOD for GA class (a) claims, “it was necessary to determine an allowed amount for estimated administrative expenses that would be incurred in connection with all remaining open claims, even after the Reliance liquidation is concluded.” *Id.*, ¶ 9. After research, analysis and consultation from the “GA community,” the Liquidator has determined that GA administrative expenses after September 30, 2016, would be based on a flat amount of \$3,300 for each remaining open claim. *Id.* Exhibit B to the Application details the information included in the calculation of the total allowed amount for the GA class (a) omnibus NODs for the 14 GAs included in the Application. The itemized amounts include disallowed administrative expenses previously approved by the Court, allowed administrative expenses previously approved by the Court, disallowed administrative expenses recommended for Court

³ The Liquidator notes that the Application encompasses only claims submitted by Property Casualty GAs that have recently agreed to a final omnibus settlement of class (a) and class (b) claims in addition to the calculation and conversion of early access advances to distribution payments.

approval, and allowed administrative expenses recommended for Court approval. Importantly, the Liquidator avers that:

All of the amounts listed in the Total Class (a) Omnibus Allowed Amount column of Exhibit B have been determined by the Liquidator to be reasonable and necessary class (a) “expenses of a guaranty association in handling claims”, appropriately reimbursable, and otherwise consistent with the relevant provisions of the Act. The Liquidator further believes that the approval of these undisputed final omnibus class (a) NODs is in the best interests of the Reliance Estate, its policyholders, claimants and other creditors.

Id., ¶ 11.

As with the issuance of a final omnibus NOD for class (a) claims, the Liquidator has determined an Allowed Amount (AA) for any open class (b) claims that will require continued GA payments beyond the closure of the Reliance Estate and liquidation. Final omnibus class (b) NODs are set forth for 10 GAs (*see* Exhibits D and E),⁴ and the Liquidator is recommending approval of 2,140 individual class (b) GA claims. According to the Liquidator, these claims primarily include workers’ compensation claims and the associated indemnity payments, medical costs and allocated loss adjustment expenses (ALAE). Exhibit C to the Application lists the loss claims for individual class (b) undisputed claims, which have not been previously submitted to and approved by the Court. A Valuation Amount for each GA claim number is listed in addition to a Total Valuation Amount for each GA. Finally, Exhibit C sets forth the GA Level Adjustments for each GA. The Total Valuation Amount plus or minus the GA Level Adjustment equals the Recommended AA for Claims for each GA.

⁴ Exhibit D to the Application is a summary report, which lists each GA included in the Application and the total Recommended AA for Claims for each GA.

Exhibit E, in turn, lists the final omnibus NODs that have been issued to each GA for its class (b) claims. The Total AA for each GA's class (b) claims consists of all class (b) allowed amounts previously approved by the Court and the class (b) allowed amounts currently recommended for approval and listed in Exhibit C.

The Liquidator believes that:

[T]he Total AA for Claims for each class (b) final omnibus NOD listed on Exhibit E is appropriate, fair, equitable, and consistent with the relevant provisions of the Act and this Court's orders. The Liquidator further believes that the approval of the NODs listed on Exhibit E at priority class (b) is in the best interests of the Reliance Estate, its policyholders, claimants and other creditors.

Id., ¶ 21.

Next, because the Liquidator has settled all the class (b) claims for the GAs included in the Application, the Liquidator seeks to convert early access payments received by most of the GAs pursuant to Section 536 of the Act, added by the Act of December 14, 1977, P.L. 280, 40 P.S. § 221.36 (pertaining to Liquidator's proposal to distribute assets to GAs) into distribution payments so that the GAs with an approved final omnibus class (b) NOD will share in the same distributions as all other claimants with an approved class (b) NOD. In Exhibit F to the Application, the Liquidator sets forth the numerical values included in the conversion calculation, including Total AA for class (b) claims, offset amounts, if any, GA net distribution amounts, early access advances to GAs, early access amounts to be converted to distribution payments and early access amounts to be retained by GAs, as well as the conversion calculation itself. No objection has been raised to this request or the Liquidator's calculations.

Finally, the Liquidator notes that because an ancillary liquidation proceeding is pending in Massachusetts and New Mexico where the ancillary receivers took possession of the special deposit posted by Reliance prior to liquidation, the distribution payment reflected on Exhibit F for the Massachusetts Insurers Insolvency Fund (MIIF) and the New Mexico Property & Casualty Insurance Guaranty Association (NMPCIGA) (the Deposit GAs) is only an estimated amount based on current information, and any special deposit funds distributed to these GAs as reimbursement must be offset against the distribution payments owed by the Liquidator. According to the Liquidator, “until the special deposits are disbursed by the ancillary receiver and the ancillary proceedings are closed, the Liquidator will not be able to calculate a correct distribution payment for the Deposit GAs.” Application, ¶ 25. Thus, “[o]nce the ancillary proceedings are closed and the Liquidator receives a final report regarding allocation of the special deposit proceeds . . . for both loss and administrative expense claims, net of ancillary receiver expenses, a final and correct calculation of distribution payments can made.” *Id.*, ¶ 27. Accordingly, at this time, the Liquidator is seeking approval of both the class (a) and class (b) final omnibus NODs issued to MIIF and NMPCIGA. Thereafter, once the ancillary proceeding is closed and the Liquidator has received the final report regarding allocation of the special deposit proceeds, the Liquidator will calculate the distribution payment by subtracting any early access advances paid and any payments made by the ancillary receiver, followed by application of the approved distribution percentage.

In sum, the Liquidator is seeking approval of: (1) the final omnibus GA NODs on Exhibits B and E; (2) the Disallowed and Allowed Expenses Recommended on Exhibit B; (3) the conversion of early access payments to distribution payments,

including the Offset Amount, as indicated on Exhibit F; and (4) her authority to make a distribution payment to the GAs for final class (a) and (b) NODs during the next regular quarterly distribution cycle.

Considering the Liquidator's representations, the lack of any objection to the Application, and the Liquidator's broad authority to administer the Estate in a manner which protects the interest of the insureds, public and creditors, *see* Sections 501 through 563 of the Act, 40 P.S. §§ 221.1 – 221.63, the Court approves the Application pursuant to the following Order.

AND NOW, this **22nd day of May, 2018**, upon consideration of the Liquidator's Application for Approval of Final GA Omnibus Notices of Determination as of April 16, 2018 (Application), the Application is **GRANTED** as follows:

1. The Disallowed Expenses Recommended and the Allowed Expenses Recommended, detailed on Exhibit B of the Application, are approved both as to class and amount;

2. The Total Class (a) Omnibus Allowed Amounts shown on Exhibit B for the GA omnibus class (a) Notices of Determination (NODs) are approved both as to class and amount as a full and final settlement of all class (a) claims;

3. Excluding the Deposit GAs listed in the Application, the Liquidator is authorized to make a final payment on class (a) NODs in the amount of the Allowed Expenses Recommended, as shown on Exhibit B, in the next regular quarterly distribution cycle;

4. The GA individual class (b) undisputed claims listed on Exhibit C of the Application are approved as to Class, Valuation Amount, GA Level Adjustments, and Recommended Allowed Amount for Claims;

5. The final undisputed GA omnibus class (b) NODs listed on Exhibit E of the Application are approved both as to Class and Total Allowed Amount for Claims as a full and final settlement of all class (b) claims;

6. The Offset Amounts, if any, netted against the GA Total Distribution Amount, as shown on Exhibit F, are approved;

7. The conversion of the early access advances to distributions for class (b) claims is approved as set forth in Exhibit F of the Application;

8. Excluding the Deposit GAs listed in the Application, the Liquidator is authorized to make a Distribution Payment to any GA for class (b) claims, as shown on Exhibit F, in the next regular quarterly distribution cycle;

9. The GAs listed on Exhibit F to the Application will receive further distributions on class (b) NODs first through the conversion of any early access advances retained by the GAs (set forth in Exhibit F), and then through the payment of distributions whenever the Court approves an increase in the interim distribution percentage or approves a final distribution; and

10. The Liquidator is authorized to make a distribution payment to the Deposit GAs for both final omnibus class (a) and (b) NODs as shown on Exhibits B and F, respectively, when the pending ancillary proceedings in Massachusetts and New Mexico are closed and the Liquidator receives a final report. The class (a) distribution payment shall be paid in full at 100% less any class (a) distribution payments paid to the Deposit GA by the ancillary receiver. The class (b) distribution payment shall be calculated by applying the Court approved distribution percentage

to the allowed amount of the final omnibus class (b) NOD, less any early access advances paid by the Liquidator, and less any distributions paid to the GA by the ancillary receiver. The Deposit GAs will then receive further distributions on their final omnibus class (b) NOD, if appropriate, whenever the Court approves an increase in the distribution percentage.



BONNIE BRIGANCE LEADBETTER,
Senior Judge