

FILED
11-03-2023
CIRCUIT COURT
DANE COUNTY, WI
2019CV001209

STATE OF WISCONSIN : CIRCUIT COURT : DANE COUNTY
BRANCH 15

In the Matter of the Liquidation of Northwestern
National Insurance Company of Milwaukee,
Wisconsin:

Case No. 2019CV001209

Case Code: 30703

c/o: Office of the Commissioner of Insurance
125 South Webster Street
Madison, WI 53703

**NOTICE OF MOTION AND MOTION FOR FINAL LIQUIDATION ORDER AND
DISCHARGE**

TO: All Interested Parties

NOTICE

PLEASE TAKE NOTICE that the Petitioner, Nathan Houdek, Commissioner of Insurance of the State of Wisconsin (the “Commissioner”), brings this Motion for Final Liquidation Order and Discharge (the “Motion”) before the Circuit Court for Dane County, the Hon. Stephen Ehlke, for hearing in the Dane County Courthouse, 215 South Hamilton Street, Madison, WI 53703-3285, on a date and at a time to be determined by the Court. Written objections to the Motion and the proposed Order, along with supporting documentation, shall be filed with the Court and served on the Commissioner, by his attorneys, James A. Friedman, Anthony S. Baish, and Zachary P. Bemis of Godfrey & Kahn, S.C., within 30 days of the date of the Motion. The Commissioner shall file and serve any responsive pleadings by no later than 40 days from the date of the Motion.

MOTION

Nathan Houdek, Commissioner of Insurance of the State of Wisconsin and Liquidator of Northwestern National Insurance Company of Milwaukee (“NNIC”), by his attorneys,

Godfrey & Kahn, S.C., hereby moves the Court, pursuant to Wis. Stat. § 645.74, for a Final Liquidation Order and Discharge.

BACKGROUND

1. NNIC was a property and casualty insurer domiciled in the State of Wisconsin, organized in 1869 by an act of the Wisconsin Legislature.

2. NNIC has not sold any new insurance policies since 1986.

3. On March 8, 2007, NNIC was placed into Rehabilitation based on the petition of the Wisconsin Office of the Commissioner of Insurance (the “OCI”) and upon approval of the Dane County Circuit Court.

4. The Rehabilitation Order established a general account and a segregated account.

5. On January 20, 2012, NNIC exited from rehabilitation based on the motion of the OCI and upon approval by the Dane County Circuit Court.

6. On May 31, 2016, SOBC Sandal Holding LTD (“SOBC”) purchased NNIC upon the approval of the OCI. SOBC operated NNIC as a run-off company.

7. On March 14, 2019, by Stipulation and Order approved by the Commissioner of Insurance, the OCI was granted full custody and control of all of NNIC’s assets.

8. On May 1, 2019, the OCI filed for an Order for Liquidation of NNIC pursuant to Wis. Stat. § 645.42, which the Court approved on May 2, 2019, granting the Liquidator all powers provided by Wis. Stat. § 645.46.

9. As of May 2, 2019, NNIC was only licensed to do business in the following nine states:

- a. California
- b. Connecticut
- c. Delaware

- d. Minnesota
 - e. New Hampshire
 - f. New Jersey
 - g. Pennsylvania
 - h. Texas
 - i. Wisconsin
10. The Liquidator presently has cash-on-hand in the amount of \$182,616.61.

FINANCIAL REPORTS

11. The Liquidator has made the following filings with the court regarding the financial status of NNIC:

- April 24, 2020: 2019/2020 annual report
- June 11, 2020: Financial statement as of March 31, 2020
- September 3, 2020: Financial statement as of June 30, 2020
- December 29, 2020: Financial statement as of September 30, 2020
- December 30, 2020: Amended financial statement as of September 30, 2020
- May 12, 2021: 2020/2021 annual report
- July 7, 2021: Financial statement and report
- September 9, 2021: Financial statement and report
- November 5, 2021: Response to objection to denial of proof of claim (which included updated financial reports)
- December 6, 2021: Financial statement as of September 30, 2021
- February 23, 2022: Financial statement as of December 31, 2021
- May 31, 2022: Updated financial statement
- August 18, 2022: Financial statement as of June 30, 2022
- November 15, 2022: Financial statement as of September 30, 2022
- March 9, 2023: Financial statement as of December 31, 2022
- May 4, 2023: Financial statement as of March 30, 2023
- July 31, 2023: Financial statement as of June 30, 2023
- October 23, 2023: Financial statement as of September 30, 2023

RECOVERY OF CLAIMS PAYING RESOURCES

12. The Liquidator has recovered a total of \$1,126,162.97 from various reinsurers.

13. The Liquidator recovered a total of \$1,064,735 in liquidated Letters of Credit. An itemization of the Letter of Credit recovery is contained in Exhibit A to the Notice of Motion and Motion to Approve the Liquidator's Plan of Distribution of Liquidated Assets ("Motion to Approve Distribution Plan"), filed with the Court on September 29, 2023.

14. The Liquidator has collected a total of \$2,605,883.65 of statutory deposits. A list of the recovered statutory deposits is contained in Exhibit B to the Motion to Approve Distribution Plan.

15. The Liquidator entered into a commutation agreement with Central RE providing the Liquidator with \$47,000 in claims paying resources. The commutation agreement was approved by the Court on July 12, 2021.

16. The Liquidator entered into a commutation agreement with United Insurance Company through which the Liquidator paid United \$731,563.72 and retained \$281,502.28. The commutation agreement was approved by the Court on September 9, 2022.

17. The Liquidator entered into a commutation agreement with Swiss Reinsurance America Corporation, on behalf of itself and various other insurers (collectively, "Swiss Re"), through which Swiss Re paid NNIC \$100,000 in full satisfaction of both parties' past, present, and future obligations and liabilities under the various reinsurance agreements between the parties. The commutation agreement was approved by the Court on April 10, 2023.

18. The Liquidator entered an agreement for the sale of Compass Insurance Company ("Compass") to Avid Insurance Company, LLC ("Avid"). Pursuant to the stock purchase agreement, NNIC, as the direct parent and current owner of the stock of Compass, will receive proceeds in the amount of \$100,000. The sale of Compass remains subject to the approval of a Form A filing by the New York Department of Financial Services ("NYDFS"). The stock

purchase agreement also provides that Avid will pay a \$50,000 break-up fee in the event Avid terminates the stock purchase agreement before closing because (i) Avid withdraws the New York Form A filing; or (ii) the Form A filing is rejected by the NYDFS. The Court approved the sale on January 20, 2023.

ASSUMPTION AGREEMENTS WITH CAPTIVE REINSURERS

19. As of May 2, 2019, NNIC had reinsurance relationships with 39 captive reinsurers. The Liquidator, through its then counsel, St. Marie Boll, LLC, successfully concluded assumption agreements with 16 of these captive reinsurers or their sponsoring corporations. These assumption agreements required the captive reinsurer or the sponsoring corporation to assume full responsibility for current and future claim obligations consistent with the coverage agreed to in the underlying reinsurance agreement, in exchange for NNIC's return of collateral it held. The List of Assumption Agreements entered into by the Liquidator is contained in Exhibit C to the Motion to Approve Distribution Plan.

20. The Liquidator attempted, but was unable, to enter into an assumption agreement with the following captive reinsurers:

- Pie Five Pizza/Pizza Inn
- Aramark/captive Aramount
- Armco/captive AK Steel
- Tang Insurance
- Wescap

21. The policy obligations of these captive insurers, consistent with the underlying reinsurance agreements between NNIC and each captive, shall continue to the extent provided in the respective reinsurance contract.

ANNUITIES

22. NNIC entered into annuities with policyholders and third parties to resolve claims. The Liquidator is aware that Lincoln Financial Group (“Lincoln Financial”) presently has three existing contracts and Aurora National Life Assurance Company (“Aurora”) has thirteen existing contracts.

23. Exhibit A to this Motion lists the contracts with Lincoln Financial, and Exhibit B to this Motion lists the contracts with Aurora.

24. These annuities have already been fully funded.

25. Lincoln Financial and the OCI have agreed that Lincoln Financial will continue to handle the day-to-day administration of the annuities listed in Exhibit A hereto, and the OCI will be the owner of these policies with the authority to make decisions regarding changes or distributions of the funds.

26. Aurora and the OCI have agreed that Aurora will continue to handle the day-to-day administration of the annuities listed in Exhibit B hereto, and the OCI will be the owner of these policies with the authority to make any decisions regarding changes or distributions of the funds.

GUARANTY ASSOCIATION CLAIM PAYMENTS AND ALL ADMINISTRATIVE COSTS

27. On August 3, 2021, the Liquidator informed all Guaranty Associations that the cutoff for administrative costs was September 30, 2021, and that all administrative costs needed to be submitted to the Liquidator no later than October 15, 2021.

28. The National Organization of Life and Health Insurance Guaranty Associations (NOLHGA) established claim less premium obligations as of September 31, 2021, in the amount of \$5,960,015, on behalf of its affected member guaranty associations, which are classified as

Class Three Claims. The breakdown of the obligations by state is contained in Exhibit D to the Motion to Approve Distribution Plan.

29. The Property and Casualty Guaranty Associations established policy obligations as of September 30, 2021, in the amount of \$13,537,733.03. The breakdown by state is contained in Exhibit E to the Motion to Approve Distribution Plan.

30. The Property and Casualty Guaranty Associations and NOLHGA submitted claims for administrative costs totaling \$3,797,752.69, as of September 29, 2023. The breakdown by state is contained in Exhibit F to the Motion to Approve Distribution Plan.

31. The Liquidator has incurred administrative costs in the amount of \$1,703,220.91 through August 31, 2023, which costs are detailed in Exhibit G to the Motion to Approve Distribution Plan.

CLAIMS

32. The May 2, 2019 Liquidation Order set a bar date for Proofs of Claim (POCs) to be filed of November 2, 2019 (“Bar Date”).

33. Before the Bar Date, the Liquidator received a total of 255 POCs. After the Bar Date, the Liquidator received an additional 13 POCs.

34. The total amount of POCs seeking reimbursement is \$657,972,190.77.

CLAIMS PAID

35. The Liquidator paid all accident and health claims in full that were incurred by thirty-five persons covered by accident and health policies classified as issued to New York residents on or before May 17, 2019.

36. Pursuant to Wis. Stat. § 645.43(1), these policy holders had only fifteen days of coverage following the liquidation date.

37. These claimants were not eligible for guaranty fund coverage under New York law because their accident and health policies had been issued by a property and casualty insurer.

38. Twenty-three insureds under accident and health policies accepted buy outs, and eight accident and health policies either lapsed or were terminated.

CLAIMS DENIED

39. On August 24, 2021, the Liquidator sent determination letters to all claimants that submitted POCs (“Determination Notices”). The Determination Notices informed recipients of the class to which their POC was assigned and that the POC was to be denied based on lack of claims-paying resources.

40. Also on August 24, 2021, the Liquidator provided notice to the Court of the Liquidator’s POC class determinations, that all POCs were to be denied based on lack of claims-paying resources, and of the Liquidator’s mailing of Determination Notices.

41. The Determination Notices informed recipients that, pursuant to Wis. Stat. § 645.65, any objection to the determination and denial of a claim had to be filed with the Court within sixty days of the mailing of the Determination Notice. One claimant filed, but subsequently withdrew, an objection.

42. The Determination Notices also informed recipients that if any claims-paying resources were available after administrative costs were paid, the Liquidator would ask the Court to split the remaining resources equally among all class three claims that were timely filed.

43. The week of September 18, 2023, the Liquidator sent all claimants that received Determination Notices a Notice of Status and Intent to Close the Liquidation, informing them that the Liquidator had sought all available assets justifying the expense of collection and had determined that no POCs would be paid in whole or in part, except Guaranty Association administrative expenses, which have been paid, in part, pursuant to the Plan of Distribution.

FEDERAL GOVERNMENT CLAIMS

44. The federal government filed two POCs. One POC for \$977,375.50 was filed with respect to the United States Department of Justice's judgment against Pierce Waste Oil Services Inc. for costs under the Comprehensive Environment Response, Compensation, and Liability Act ("CERCLA"). The second was filed for an unknown amount and for which no policy number of claim was identified.

45. Pursuant to Wis. Stat. § 645.68, the federal government's claims are classified as Class 3(c) claims, payable only after Class One and Class Three claims are paid in full.

46. Beginning at least as early as September 2022 and continuously thereafter, the Liquidator has sought from the federal government a release of all claims against NNIC, including claims by the Internal Revenue Service.

47. Despite the Liquidator's best efforts, it has been unable to obtain a release. The federal government has neither agreed nor declined to grant a release, but rather has not responded substantively to the Liquidator's communications and requests for a release.

48. Issuance of a final order of liquidation and discharge of the Liquidator should not be delayed indefinitely due to the federal government's failure to respond to the Liquidator's request for a release in circumstances where, as here, no resources are or will be available to pay any of the Class 3(c) claims of the federal government, including the Internal Revenue Service.

PLAN OF DISTRIBUTION

49. On September 29, 2023, the Liquidator filed its Plan of Distribution of assets regarding filed POCs.

50. There were no objections to the filed Plan of Distribution.

51. The Court entered an order approving the Plan of Distribution on October 16, 2023.

52. On October 18, 2023, the Liquidator distributed payments to the Guaranty Associations in accordance with the Plan of Distribution.

TAXES

53. Crowe LLC prepared tax returns for the years 2021 and 2022, including all required attachments, for NNIC to be included in the consolidated SOBC Corporation and Subsidiaries income tax return.

54. Crowe LLC will similarly prepare a tax return for the year 2023, including all required attachments, for NNIC to be included in the consolidated SOBC Corporation and Subsidiaries income tax return.

POST LIQUIDATION COSTS

55. The Liquidator anticipates the need to retain funds on hand for post-liquidation costs in the amount of approximately \$150,000.

56. Crowe LLC anticipates post-closing costs of \$12,500 for the preparation of income tax returns and for related services, Rector and Associates anticipates post-closing costs of \$2,500 for regulatory services, Strohm Ballweg anticipates post-closing costs of \$6,000 for accounting services, and post-closing legal expenses are expected to total approximately \$2,500.

57. The remaining funds will be used for record storage and destruction, as explained below, or retained for additional foreseeable and unforeseeable costs, and any remaining amounts will be distributed in accordance with Paragraphs 3-6 of the Plan for Distribution.

DISPOSITION OF RECORDS

58. Pursuant to the Liquidator's 2019-2020 Annual Report filed with the Court, the Liquidator has been destroying redundant or unnecessary records which have not been required for the effective management of the estate.

59. The Liquidator intends to destroy the following NNIC records upon the execution of the Final Liquidation Order: policy files, claim records, tax documents, reinsurance records, and accounting records.

60. Other records will be retained in accordance with procedures established for liquidation of domestic insurers in Records Retention/Disposition Authorization #9, dated August 31, 2018, which was attached to and filed with the 2019-2020 Annual Report.

WHEREFORE, the Liquidator respectfully requests an Order as follows:

1. Authorizing the OCI, at its discretion, to contract for or to employ personnel to provide, and to pay from the assets retained for, any additional services needed to resolve costs arising from the Liquidation, including but not limited to fees, costs and expenses for auditors, accountants, attorneys, examiners, adjusters, assistants, consultants, experts, and other independent contractors.
2. Authorizing the OCI to retain funds on hand for post-liquidation costs in the amount of approximately \$150,000.
3. Authorizing the OCI to make decisions regarding any changes or distribution of funds regarding annuities that are the subject of NNIC's contracts with Lincoln Financial and Aurora, respectively.
4. Subject to the terms of the Plan of Distribution approved by this Court on October 16, 2023, extinguishing all claims against NNIC and the liquidation estate, including but not limited to claims by the federal government.
5. Enjoining all persons and entities, including policyholders of NNIC, and any third-party claimants, from commencing, prosecuting, or maintaining any actions or proceedings, at law or in equity, against NNIC or the Liquidator including, but not limited to, for the purpose

of attachment, collection, foreclosure, garnishment or execution, and from obtaining any judgment, lien, levy or other preferential claim against NNIC or the Liquidator.

6. Authorizing the OCI to destroy the following NNIC records: policy files, claim records, tax documents, reinsurance records, and accounting records. Other records will be retained in accordance with procedures established for liquidation of domestic insurers in Records Retention/Disposition Authorization #9 dated August 31, 2018, which was attached to and filed with the 2019-2020 Annual Report.

7. Requiring the Liquidator, within six months after the Final Liquidation Order, to transfer any remaining assets pursuant to the Plan of Distribution.

8. Specifying that notwithstanding the closing of the Liquidation, to the extent the state guaranty associations continue to make payments of claims, the reinsurers that have not entered an assumption or commutation agreement with NNIC shall remain responsible to the extent provided in their reinsurance contracts.

9. Discharging and releasing the Liquidator, and all of its employees, agents, lawyers, accountants, and other advisors in the conduct of the Liquidation, from any and all further duties, obligations, liabilities, actions, causes of action, demands, claims, damages, judgments, levies, and executions, that relate in any way to or arise out of the Liquidation.

10. Terminating the Liquidation proceedings.

Dated this 3rd day of November, 2023.

GODFREY & KAHN, S.C.
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Respectfully submitted,
GODFREY & KAHN, S.C.

By: *Electronically signed by James A. Friedman*
James A. Friedman
Anthony S. Baish
Zachary P. Bemis
Attorneys for Petitioner Nathan Houdek,
Commissioner of Insurance of the State of
Wisconsin

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Exhibit A –

Lincoln Financial Group Annuities

Policy/Contract Numbers:

- 4000008192
- 4000024833
- 4000065355

Exhibit B –**Aurora National Life Assurance Company Annuities**

Policy Numbers:

- C21305410A Robin Timberlake
- C21305411A Jamey Baker
- C21306968A Annuitant Phillip Swabbey is deceased. (His 5 beneficiaries are being paid using child contracts: C25000158A, C25000159A, C25000160A, C25000161A, and C25000162A)
- C21306969A Nancy DePaul-Martin
- C21315744A David England and Karen England, Joint & Survivor 100%, Payee is David England and Karen England
- C21333969A James Pfister
- C21403881A Wesley Lake, Jr
- C21404068A Desiree Daniel
- C21404311A Ralph Childers
- C21406265A Diane Strong is payee (Annuitant Michael Strong deceased, 10/12/2006)
- C21406590A Amos Gourdine
- C21406731A Irene Cordova
- C21406268A James Swisher