

SET FOR HEARING BEFORE
JUDGE Bonner
THE 8th DAY OF July
2021 AT 10:30

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

FILED IN DISTRICT COURT
OKLAHOMA COUNTY

JUN 11 2021

STATE OF OKLAHOMA, ex rel.)
GLEN MULREADY, in his capacity as)
Insurance Commissioner and as Receiver for)
Heritage National Insurance Company,)

RICK WARREN
COURT CLERK

38 _____

Plaintiff,)

Case No. CJ-2002-1614

v.)

Judge Anthony L. Bonner

HERITAGE NATIONAL INSURANCE COMPANY,)
a licensed domestic Insurer in the State of Oklahoma)

Defendant.)

**RECEIVER'S MOTION TO DISTRIBUTE ASSETS,
CLOSE ESTATE, AND REQUEST FOR DISCHARGE**

Glen Mulready, Insurance Commissioner, as Receiver (the "Receiver") for Heritage National Insurance Company ("HNIC") hereby submits his Motion to Distribute Assets, Close Estate and Request for Discharge. In support of this Application, the Receiver states as follows:

BACKGROUND

1. Title 36 O.S. §§ 1901, et seq. ("Liquidation Act"), governs proceedings through which an insolvent insurer such as HNIC shall be liquidated.

2. Pursuant to the Liquidation Act, on March 15, 2002, this Court entered its Order Appointing Receiver for Heritage National Insurance Company and Granting Injunctive Relief ("Receivership Order"), in which the Court appointed the Insurance Commissioner as Receiver for the HNIC estate.

3. Section 1927.1(B) of the Liquidation Act (the "priorities statute") establishes a priority system for distribution of assets of the estate of an insolvent insurer.

4. Pursuant to 36 O.S. §1927.1, the court has approved the Class 1: Administrative expenses of the receivership through March 31, 2021.

5. On December 11, 2009, this Court approved Class 2 claims in the amount of \$1,544,306.73 by the Oklahoma Life and Health Insurance Guaranty Association (“OLHIGA”) and \$431,223.97 of the Texas Life, Accident, Health & Hospital Service Insurance Guaranty Association, now known as Texas Life and Health Insurance Guaranty Association (“TLHIGA”).

6. Subsequently, the guaranty associations have supplemented their Class 2 claims. OLHIGA has submitted an additional \$86,949.22 and TLHIGA an additional \$3,168.24.

7. The guaranty associations have also submitted Class 3 claims of \$13,505,115.19 by OLHIGA and \$5,542,037.60 by TLHIGA.

8. On May 4, 2021, the Receiver filed Receiver’s Report on Claims Evaluation and Request for Confirmation of Receiver’s Recommendation which the Court will hear prior to this application. Therein, the Receiver recommends approval of non-guaranty association Class 3 claims of \$9,042.79.

9. Pursuant to 36 O.S. §1927.1, beginning with Class 1, the members of each class must be paid in full or adequate funds retained for such payment, before any member of the next class may receive payment.

10. On December 11, 2009, this Court approved a First Early Access Agreement and Class 2 distribution of \$1,000,000.00. Subsequently, on June 28, 2019, this Court approved a Second Early Access Agreement and approved Class 2 distribution of \$230,000.00.

11. Pursuant to 36 O.S. §1927.1(B)(2), the First Early Access Agreement and the Second Early Access Agreement provide that the associations agree to return to the Receiver the

disbursements as may be required to pay Class 1 claims.¹

12. On September 15, 2008, judgment was entered against former HNIC officers Brad Frost and Wakon Redcorn in U.S.D.C. N.D. Okla. Case No. 05-CR-001/002-SPF and awarded criminal monetary restitution to the Receiver, OLHIGA and TLHIGA totaling \$1,765,786.

13. On March 25, 2010, this Court approved Receiver's Assignment of Criminal Monetary Restitution Agreement which assigned \$253,788.25 restitution awarded to the Receiver U.S.D.C. N.D. Okla. Case No. 05-CR-001/002-SPF to OLHIGA and TLHIGA.

14. Through March 31, 2021, OLHIGA has received \$76,454.37 and TLHIGA has received \$34,311.46 in restitution, and it is expected that restitution payments will continue after the receivership is closed.

15. The Receiver has faithfully and diligently completed the liquidation and performed the duties assigned to him by the Court's Orders and pursuant to the Oklahoma Uniform Insurers Liquidation Act, 36 O.S. §§ 1901, et.seq., with the exception of certain ministerial tasks described below.

FINAL RECOMMENDATION ON CLAIMS

16. The Receiver requests the Court's approval of the Class 1 expenditures that have been paid after March 31, 2021 as shown in Exhibit 1 (Direct Administrative fees and expenses) and Exhibit 2 (Common Expenses Allocated by Oklahoma Receivership Office, Inc.).

17. The Assistant Receiver is an employee of the Oklahoma Receivership Office and

¹ The Second Early Access Agreement provides in II-3 in part "Pursuant to 36 O.S. §1927.1, upon a determination of the Receiver, in his sole discretion, that Reimbursement of all or any portion of a Class 2 Disbursement is necessary for the proper administration of the Estate, OLHIGA and TLHIGA shall pay the amount of Reimbursement the Receiver requests." The First Early Access Agreement is similar except change of pronoun from "his" to "her" and refers to TLHIGA by the acronym "TLAHHSIGA"

assists the Commissioner in his capacity as Receiver in the day-to-day operations of each individual estate. The Assistant Receiver allocates her time between services as an Assistant Receiver and services as a staff member of Oklahoma Receivership Office.

18. The Assistant Receiver has expended time as shown in Exhibit 3 since March 31, 2021, in the performance of necessary services and is entitled to compensation. The Receiver recommends the Court's approval of the Assistant Receiver fees plus applicable payroll taxes.

19. The Receiver recommends approval of supplemental Class 2 claims of \$86,949.22 by OLHIGA and \$3,168.24 by TLHIGA.

20. The Receiver recommends approval of Class 3 claims of \$13,505,115.19 by OLHIGA and \$5,542,037.60 by TLHIGA.

APPROVAL OF POST-CLOSING TASKS

21. The Assistant Receiver submitted an affidavit on February 24, 2020 to the United States Department of Justice in support of a request for a release under the Federal Priority Statute, 31 U.S.C. § 3713 ("federal release"). The process undertaken by the Department of Justice to confirm there are no federal liabilities owed by the estate often takes in excess of three years to complete.

22. The Oklahoma Receivership Office, Inc. ("ORO") is a not-for-profit Oklahoma corporation. Its purpose is to assist the Oklahoma Insurance Commissioner, as Receiver of insurance companies subject to delinquency proceedings in Oklahoma. The ORO is a perpetual corporation whose existence is expected to continue after the closure and termination of this estate.

23. The ORO is designed for and is uniquely qualified to perform the post-closing ministerial tasks on behalf of the HNIC Estate, and it is in the best interest of the HNIC Estate that ORO perform the post-closing tasks.

24. Therefore, the Receiver requests the estate be closed and responsibility for any ministerial tasks required during the pendency of receipt of the release and subsequently be performed by ORO.

25. The Receiver requests authority to negotiate and execute a release agreement with the United States.

26. The Receiver requests authority to destroy estate records upon receipt of United States release agreement subject to the terms therein.

27. Attached as Exhibit 4 is a Post-Closing Budget which details ministerial tasks necessary to conclude the HNIC Estate.

28. The Receiver requests that the Court expressly authorize and approve the performance by the ORO of Post-Closing Tasks.

APPLICATION FOR FINAL DISTRIBUTION

29. The HNIC Estate as of March 31, 2021 has current cash and cash equivalent assets of \$11,732.53.

30. The Receiver request the Court approve the Assistant Receiver's fees as shown in Exhibit 3 plus applicable payroll taxes.

31. The Receiver request the Court approve a Class 1 distribution to the ORO for the administration of post-closing tasks as shown in Exhibit 4.

32. The Receiver request the Court approve the Receiver's request for return of early access distributions as needed to fund the Class 1 expenses not to exceed the post-closing budget by 25%.

33. The Receiver requests the Court approve a final Class 2 distribution after the performance of other post-closing tasks of any funds not required for Post-Closing Tasks to the

associations in the percentages shown in Exhibit 5.

34. The remaining restitution awarded and assigned to TLHIGA exceeds the balance of their Class 2 claim. The Receiver and TLHIGA have agreed that if recoveries exceed their Class 2 claim, TLHIGA will distribute a pro-rata Class 3 distribution to the non-guaranty association Class 3 Texas resident claimant subject to a minimum distribution of \$50.00.

APPLICATION TO CLOSE ESTATE AND DISCHARGE RECEIVER

35. Having performed and completed his responsibilities as Receiver, the Receiver further requests that the Court's closing order discharge and release the Receiver, Assistant Receiver and all other agents of the Receiver from any responsibilities and liabilities in relation to HNIC effective upon the filing of a Post-Closing Report certifying that the Post-Closing Tasks have been completed without further notice, hearing or order of this Court.

36. The Receiver further requests that the Court enter an Order that confirms all injunctions and stays entered by the Court, including those in the Receivership Order, permanently remain in full force and effect and that this Court retains exclusive jurisdiction of the enforcement thereof.

37. The Receiver further requests that the Court enter an Order that bars all claims against HNIC, the Receiver, Assistant Receiver, retained counsel, and any other employee or personnel of the Receiver or Assistant Receiver.

REQUEST FOR RELIEF

Accordingly, the Receiver requests that the Court enter an Order:

- a. approving the Class 1 expenses incurred after March 31, 2021, as shown in Exhibit 1 and Exhibit 2;
- b. approving the Assistant Receiver's fees as shown in Exhibit 3 plus applicable payroll

- taxes;
- c. approving distribution to ORO for Class 1 administration of post-closing tasks as shown in Exhibit 4;
 - d. approving the Receiver's request for the return of early access distributions as needed to fund the Class 1 expenses;
 - e. expressly authorizing and approving the performance of the ORO of Post-Closing Tasks;
 - f. expressly authorizing the Receiver to negotiate and execute a release agreement with the United States;
 - g. expressly authorizing the destruction of estate records upon receipt of United States release agreement subject to the terms therein;
 - h. approving a final distribution of remaining assets of HNIC;
 - i. approving the agreement with TLHIGA for potential distribution to the non-guaranty association Class 3 Texas resident creditor;
 - j. confirming that all injunctions and stays entered by the Court, including those in the Receivership Order; permanently remain in full force and effect and that this Court retain exclusive jurisdiction of the enforcement thereof;
 - k. barring all claims against Heritage National Insurance Company, the HNIC Estate, the Receiver, Assistant Receiver, and all other agents of the Receiver or Assistant Receiver;
 - l. discharging and releasing the Receiver, Assistant Receiver and all other agents of the Receiver from any responsibilities and liabilities in relation to Heritage National Insurance Company and the HNIC Estate effective upon the filing of a Post-Closing

Report certifying that the appropriate post-closing ministerial tasks related to the HNIC Estate have been completed without further notice, hearing or order of this Court;

- m. dissolving Heritage National Insurance Company;
- n. closing the HNIC Estate and terminating this proceeding;
- o. granting the Receiver such other and further relief, at law or in equity, to which the Receiver is entitled.

Respectfully submitted,



George M. Emerson, OBA # 13159
RIGGS, ABNEY, NEAL, TURPEN,
ORBISON & LEWIS,
528 N.W. 12th Street

Oklahoma City, OK 73103

Phone: (405) 843-9909

Facsimile: (405) 842-2913

gemerson@riggsabney.com

ATTORNEYS FOR GLEN MULREADY,
INSURANCE COMMISSIONER, AS
RECEIVER OF HERITAGE NATIONAL
INSURANCE COMPANY

CERTIFICATE OF MAILING

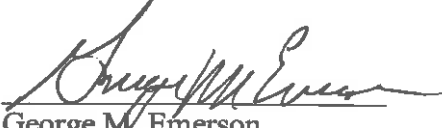
I hereby certify that on the 14th day of June, 2021, mailed a true and correct copy of the foregoing instrument postage paid and/or electronic mail with written consent, to:

OKLAHOMA RECEIVERSHIP OFFICE, INC.
DCROWE@OKARO.ORG

James W. Rhodes
KERR, IRVINE, RHODES & ABLES
201 Robert S. Kerr Ave., Suite 600
Oklahoma City, OK 73102-4267

RIGGS, ABNEY, NEAL, TURPEN, ORBISON &
LEWIS
528 N.W. 12TH STREET
OKLAHOMA CITY, OK 73103

Oklahoma Insurance Department
Bo.Debose@oid.ok.gov


George M. Emerson

Heritage National Insurance Company
 Class 1 Claims - Submitted for Court Approval
 April 1, 2021 through May 31, 2021

Exhibit 1, ORO Direct Administrative Fees & Expenses

Date	Ck Number	Amount	Total	Description
Vendor: Oklahoma Receivership Investment Fund (ORIF)				
04/30/2021	DR	4.88		Service Charge
			4.88	Service Charge
Vendor: MidCon Data Services, LLC				
04/19/2021	10005	41.40		Storage Facility
05/18/2021	10007	41.40		Storage Facility
			82.80	Storage Facility
		87.68	87.68	Total Expenditures

(Exhibit 2, ORO Administrative Fees & Expenses)

UNALLOCATED RESERVE FUND AT BEGINNING OF PERIOD	\$ 3,133.27
FUNDING APPROVED:	
NONE THIS PERIOD	\$ -
SEPARATE EXPENSES:	
POSTAGE	0.71
CONTRACT LABOR	-
TRAVEL EXPENSE	-
OFFICE EXPENSE	1.25
ASSET RESEARCH	4.00
STORAGE MAINTENANCE	-
FILE IMAGING	-
TOTAL SEPARATE EXPENSES	<u>\$ 5.96</u>
	<u>April 2021</u>
COMMON EXPENSES:	
EMPLOYEE/LABOR COSTS	\$ 5,450.01
OFFICE SUPPLIES	27.85
TRAVEL EXPENSE	(75.76)
TELEPHONE EXPENSE	446.99
POSTAGE	(1.50)
FACILITY USAGE	1,464.63
ASST RECEIVER FEES	-
CONSULTANT FEES	-
LEGAL EXPENSE	2,258.53
LEGAL EDUCATION	-
W/C INSURANCE	-
STORAGE	-
MOVING EXPENSE	-
CORPORATE INSURANCE	1,568.23
RECORD DESTRUCTION	-
OFFICE AUDIT	-
ACCOUNTANT FEES	2,015.42
BOOKS & PUBLICATIONS	-
CONTRACT LABOR	-
BANK ANALYSIS FEES	-
TOTAL MANAGEMENT FEE ALLOCATED	<u>\$ 13,154.40</u>
INTEREST EARNED	<u>0.33</u>
UNALLOCATED RESERVE FUND AT END OF PERIOD	<u><u>\$ (10,026.76)</u></u>

Donna L. Wilson, CIR-ML
 Heritage National Insurance Company, CJ-2002-1614
 April 1 through June 9, 2021

Exhibit 3

Date	Description	Prof	Travel
4/1/2021	Continue preparing exhibits for closing application; continue drafting closing application; discuss status of preparing spreadsheet to use in preparing NOD's with Debra; begin drafting Receiver's Report on Claims Evaluation and Request for Confirmation of Receiver's Recommendation; search records for information on proof of claims mailed/publication	6.25	
4/5/2021	Continue researching POC mailing and related issues for drafting Receiver's Report on Claims Evaluation and Request for Confirmation of Receiver's Recommendation	3.75	
4/27/2021	Review and approve Ellingson & Associates Q1 2021 invoice	n/c	
4/30/2021	Review correspondence Debra pulled from suspense from D Bostwick (IRS) regarding penalty and requesting she be notified when estate is closed; research inventory and scans for further information regarding penalty; review Jamin's edits to draft of Receiver's Recommendation and Order to Establish Deadline to Object and email to G Emerson (RANTOL)	2.00	
5/3/2021	Review and approve Ellingson & Associates revised Q1 2021 invoice	n/c	
5/10/2021	Review Riggs Abney Neal Turpen 4/2021 invoice	0.25	
5/18/2021	Review email from J Rixen (TLHIGA counsel) re: proposed language for closing order addressing distribution to non-GA Class 3 creditor	1.75	
5/20/2021	Review edits to closing order proposed by J Rixen (TLHIGA counsel) and accept changes; review proposed communication with POC claimant in response to inquiry as proposed by G Emerson (RANTOL) and respond	0.50	
5/26/2021	Review payables and modify closing budget; respond to G Emerson (RANTOL) re: objection to Receiver's Recommendation Report	1.75	
6/2/2021	Edit draft Response to Objection and send to G Emerson (RANTOL)	0.25	
6/3/2021	Review revised draft of Receiver's Response to the Objection Regarding Proof of Claim 1541; respond to G Emerson (RANTOL) re: timing for filing closing application; further edits to draft of closing application; update post-closing budget for May month-end cash balances and pending invoices; emails with G Emerson (RANTOL) and D Ellingson (E&A) re: edits to draft closing application	1.50	
6/4/2021	Revise closing exhibits; email closing application and exhibits to OK and TX guaranty associations for review and comment before filing	1.50	
6/7/2021	Begin drafting amendment to affidavit requesting federal release	0.50	
6/8/2021	Update closing exhibits	0.25	
6/9/2021	Review closing application and add language for proof of claim process approval and verify all items are included in Request for Relief; revise closing exhibits to eliminate duplication of pending fees and verify all pending and future expenses are included; review and sign amended affidavit for federal release and send to Debra to notarize	1.25	

TOTAL HOURS 7.50 0.00

TOTAL FEES 562.50
 Less Base Pay 263.85
 Balance Due 298.65

Exhibit 4

OKLAHOMA RECEIVERSHIP OFFICE INC
Estate: Heritage National Insurance Company

Post-Closing Tasks to be Performed by ORO
Preparation and filing of 2020 tax returns and related documents Make Class 2 distribution per court order Finalize Estate Accounting Preparation and filing of 2021 tax returns and related documents Maintain estate records pending receipt of United States Release Respond to inquiries of the United States pertaining to request for release Assign future restitution recoveries to Oklahoma Life & Health Insurance Guaranty Association Make final Class 3 distribution of remaining estate assets Dissolve corporation

Post-Closing Budget	
Separate Expenses:	
Assistant Receiver Fees	2,905.32
Special Deputy Fees	4,000.00
Legal Fees	4,320.10
Tax Preparer	5,100.00
Document Storage	3,060.66
Document Destruction	1,948.16
Corporate Dissolution	50.00
Postage	60.00
Office Expense	600.00
Travel Expense	70.00
Total Separate Expenses	22,114.24
ORO Common Expenses	55,153.62
<i>Projected Post-Closing Budget</i>	77,267.86

Exhibit 5

Heritage National Insurance Company CLASS 2

-- CLASS 2 DISTRIBUTION PERCENTAGE --

LINE

Estate Funds Available for Distribution

2a	Estate Assets available for distribution		
	Early Access Distributions	\$	1,230,000.01
	Restitution Recovered by GA's	\$	110,765.83
	Assets Held by Estate	\$	8,600.31
			\$ 1,349,366.15
2b	Less reserve for Class 1 Claims		
	Pending Court Approval	\$	6,930.47
	Closing Budget (Exhibit 3)	\$	77,172.31
2c	Equals funds available for distribution to Class 2 and lower		\$ 1,265,263.37

Class 2 Liability

2d	Guaranty Fund Class 2 - OLHIGA	78.971%	\$	1,631,255.95
2e	Guaranty Fund Class 2 - TLHIGA	21.029%		434,392.21
2f	Total Class 2 Liability	100.000%		\$ 2,065,648.16

Class 2 Distribution Percentage

2g	Distribution Percentage for Class 2		
	= line 2c divided by line 2f		61.25%
2h	Maximum Allowable Distribution Percentage		100.00%
2i	Final Distribution Percentage		
	= lesser of line 2g or line 2h, limited to zero if negative		61.25%

-- DISTRIBUTION AMOUNT ON CLASS 2 --

LINE

2j	Class 2 - inception-to-date	\$	2,065,648.16
	= amount per line 2f		
2k	Final Distribution Percentage		61.25%
	= amount per line 2i		
2l	Total Class 2 Distribution		\$ 1,265,263.37

-- CLASS 2 CLAIMS FINAL DISTRIBUTION --

LINE

2m	Total Class 2 Distribution	\$	1,265,263.37
	= amount per line 2l		
2n	Less Class 2 Early Access Distributions	\$	1,340,765.84
2o	Potential Class 2 Distribution/(Clawback)		\$ (75,502.47)