

IN THE DISTRICT COURT OF OKLAHOMA COUNTY OKLAHOMA COUNTY
STATE OF OKLAHOMA

JUL 26 2021

RICK WARREN
COURT CLERK

127 _____

STATE OF OKLAHOMA, ex rel.)
GLEN MULREADY, Insurance Commissioner)
)
Plaintiff,)
)
v.)
)
TOP FLIGHT INSURANCE COMPANY, a licensed)
domestic Insurer in the State of Oklahoma, and)
SOURCE GENERAL AGENCY, INC., a licensed)
Resident insurance producer,)
)
Defendant.)

Case No. CJ-2005-3609

Judge Don Andrews

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

Glen Mulready, Insurance Commissioner, as Receiver (the "Receiver") for Top Flight Insurance Company ("TFIC") and Source General Agency, Inc. ("Source General") 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 TFIC shall be liquidated.

2. Pursuant to the Liquidation Act, on May 20, 2005, this Court entered its Order Appointing Receiver for Top Flight Insurance Company and Source General Agency, Inc., in which the Court appointed the Insurance Commissioner as Receiver for the estate.

3. On September 8, 2005, this Court entered its Order Approving Receiver's Combined Application for Approval of (A) Notice of Liquidation of Insurer and Deadline to File Proof of Claim, (B) Form of Proof of Claim and Instructions; and (C) Application for Approval of

Receiver's Claims Reporting and Evaluation Plan and Setting Claims Bar Date.

4. The Assistant Receiver identified 9,263 potential creditors and mailed the Notice of Liquidation of Insurer and Deadline to File Proof of Claim to those parties between September 21, 2005 and March 24, 2006.

5. On May 30, 2006, the Receiver filed Receivers Report on Timely Filed Claims reporting 340 proof of claims had been received timely and 9 proof of claims had been received untimely. Subsequent to May 30, 2006, 6 additional proof of claims were received untimely.

6. 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.

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

8. This Court has approved the Assistant Receiver's four Reports on Claims Ready for Adjudication and Recommendation on Such Claims¹ approving:

Class 3: Policy claims	\$2,058.00
Class 6: Claims not specifically classified elsewhere	\$871,155.26
Class 7: Commissions and service fees	\$144.98
Untimely	\$8,707.86

9. On November 19, 2014, the claimant for POC 350 advised the Assistant Receiver that they were abandoning their claim that was allowed at Class 6 in the amount of \$656,172.26.

10. 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.

¹ The Assistant Receiver's Reports on Claims Ready for Adjudication and Recommendation on Such Claims were approved on February 1, 2007, August 1, 2007, December 6, 2007, and July 2, 2009.

11. 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

12. 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.).

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

14. 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.

15. The Receiver recommends approval of Oklahoma Property and Casualty Insurance Guaranty Association's Class 2 claim of \$251,023.16 and Class 3 claim of \$1,177,833.75.

APPROVAL OF POST-CLOSING TASKS

16. The Assistant Receiver submitted an affidavit on July 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.

17. 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.

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

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

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

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

22. Attached as Exhibit 4 is a Post-Closing Budget which details ministerial tasks necessary to conclude the estate.

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

APPLICATION FOR FINAL DISTRIBUTION

24. The estate as of May 31, 2021 has current cash and cash equivalent assets of \$72,018.81.

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

26. 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.

27. The Receiver requests the Court approve Class 2 distribution after the performance of other post-closing tasks to the association as shown in Exhibit 5.

28. The Receiver requests the Court approve the assignment of any recoverable funds that are now known or may later become known to Oklahoma Property and Casualty Insurance Guaranty Association (“OPCIGA”).

29. If funds recovered exceed the balance of OPCIGA’s Class 2 claim, the Receiver and OPCIGA have agreed recoveries in excess of their Class 2 claim, OPCIGA will distribute on a pro-rata Class 3 distribution to the non-guaranty association Class 3 claimants subject to a minimum distribution of \$50.00.

APPLICATION TO CLOSE ESTATE AND DISCHARGE RECEIVER

30. 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 TFIC effective without further notice, hearing or order of this Court upon the filing of a Post-Closing Report certifying that the Post-Closing Tasks have been completed.

31. 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.

32. The Receiver further requests that the Court enter an Order that bars all claims against TFIC, 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 the Oklahoma Property and Casualty Insurance Guaranty Association's Class 2 claim of \$251,023.16 and Class 3 claim of \$1,177,833.75;
- d. expressly authorizing and approving the performance by ORO of Post-Closing Tasks;
- e. approving distribution to ORO for Class 1 administration of post-closing tasks as shown in Exhibit 4;
- f. expressly authorizing the Receiver to negotiate and execute release agreement with the United States;
- g. expressly authorizing the destruction of estate records upon receipt of United State release agreement subject to the terms therein;
- h. approving a final distribution of remaining assets of TFIC including any assets now known or may later become known to OPCIGA;
- i. 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;
- j. barring all claims against Top Flight Insurance Company, the TFIC Estate, the Receiver, Assistant Receiver, and all other agents of the Receiver or Assistant Receiver;

- k. discharging and releasing the Receiver, Assistant Receiver and all other agents of the Receiver from any responsibilities and liabilities in relation to Top Flight Insurance Company and the TFIC Estate effective upon the filing of a Post-Closing Report certifying that the appropriate post-closing ministerial tasks related to the TFIC Estate have been completed without further notice, hearing or order of this Court;
- l. dissolving Top Flight Insurance Company;
- m. closing the TFIC Estate and terminating this proceeding;
- n. granting the Receiver such other and further relief, at law or in equity, to which the Receiver is entitled.

Respectfully submitted,


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ATTORNEYS FOR PLAINTIFF,
STATE OF OKLAHOMA, EX REL.
GLEN MULREADY, INSURANCE
COMMISSIONER
FOR THE STATE OF OKLAHOMA, AS RECEIVER FOR
TOP FLIGHT INSURANCE COMPANY

NOTICE OF HEARING

You are hereby given notice that counsel for the Receiver, has submitted the Receiver's Motion to Distribute Assets, Close Estate and Request for Discharge in the above-captioned matter. This motion shall be heard before the Honorable Don Andrews at 1:30 p.m. on the day of Oct 7th 2021. At the hearing you may have the following rights pursuant to OKLA. STAT. tit. 36, § 1938 (c):

1. To appear in person at the hearing or to be represented by counsel;
2. To testify under oath, call witnesses to testify, and furnish documentary evidence, relevant to the determination of the compensation; and
3. To cross-examine witnesses and have a reasonable opportunity to inspect all documentary evidence; and
4. To subpoena witnesses and compel the production of testimony and documents, relevant to the determination of the compensation.

CERTIFICATE OF MAILING

I hereby certify that I have this 7th day of July 2021 mailed a true and correct copy of the above and foregoing document with proper postage prepaid thereon and/or electronic mail with written consent, to:

Riggs, Abney, Neal, Turpen, Orbison
& Lewis
528 N.W. 12th Street
Oklahoma City, OK 73103

Oklahoma Receivership Office, Inc.
Attn: Debra L. Crowe
dcrowe@okaro.org

Derryberry & Naifeh
4800 North Lincoln Blvd.
Oklahoma City, OK 73105

Mark Tharp
Tharp & Associates, Inc.
larri.f@tharpassociates.com

Oklahoma Property & Casualty Insurance
Guaranty Association
OKReceiver@opciga.org



George M. Emerson

TOP FLIGHT INSURANCE COMPANY
 RECEIVERSHIP EXPENDITURES APRIL 1, 2021 THROUGH JULY 22, 2021
 CLASS 1 CLAIMS SUBMITTED FOR PRIOR COURT APPROVAL

(Exhibit 1, Direct Administrative Fees & Expenses)

DATE	CHECK NO	CHECK AMOUNT	COURT DATE	TOTAL	EXPLANATION OF EXPENSES
VENDOR: OKLAHOMA RECEIVERSHIP INVESTMENT FUND (ORIF)					
4/30/2021	DR	30.20			Service Fees
				30.20	Service Fees
VENDOR: MID-CON					
04/19/21	10008	136.20			Storage Rent
05/18/21	10010	136.20			Storage Rent
06/10/21	10011	136.20			Storage Rent
07/13/21	10012	136.20			Storage Rent
				544.80	
		575.00		575.00	TOTAL EXPENDITURES

OKLAHOMA RECEIVERSHIP OFFICE, INC.
 Summary of Management Fee Allocations for Top Flight Insurance Company
 April 1 through May 31, 2021

(Exhibit 2, ORO Administrative Fees & Expenses)

UNALLOCATED RESERVE FUND AT BEGINNING OF PERIOD	\$ 7,904.18
FUNDING APPROVED:	\$ 10.71
SEPARATE EXPENSES:	
POSTAGE	\$ -
CONTRACT LABOR	-
OFFICE EXPENSE	3.75
STORAGE MAINTENANCE FEE	-
TRAVEL EXPENSE	3.79
TOTAL SEPARATE EXPENSES	<u>\$ 7.54</u>
	THRU MAY
	2021
COMMON EXPENSES:	
EMPLOYEE/LABOR COSTS	\$ 1,516.78
OFFICE SUPPLIES & EXPENSES	12.20
OVERHEAD EXPENSES NOT OTHERWISE ALLOCATED	-
TRAVEL EXPENSES	0.11
EDUCATIONAL TRAVEL	(11.03)
POSTAGE	0.51
TELEPHONE EXPENSES	74.89
FACILITY USAGE	636.37
MOVING EXPENSE	-
ASSISTANT RECEIVER	10.72
STORAGE	-
RECORDS DESTRUCTION	-
W/C INSURANCE	-
CORPORATE INSURANCE	452.97
CONSULTANT FEES	-
TEMPORARY/CONTRACT LABOR	-
LEGAL EXPENSES	328.83
ACCOUNTING	636.90
MISCELLANEOUS	-
SERVICE CHARGES	-
TOTAL MANAGEMENT FEE ALLOCATED	<u>\$ 3,659.25</u>
INTEREST	1.15
UNALLOCATED RESERVE FUND AT ENDING OF PERIOD	<u>\$ 4,249.25</u>

Donna L. Wilson, CIR-ML
 Top Flight Insurance Company, CJ-2005-3609
 April-July, 2021

Exhibit 3

<i>Date</i>	<i>Description</i>	<i>Prof</i>	<i>Travel</i>
4/22/2021	Begin drafting closing order	0.75	
4/23/2021	Continue drafting closing application	5.00	
4/26/2021	Continue drafting closing application; begin preparing closing exhibits	1.25	
4/28/2021	Review Ellingson & Associates Q1 2021 Invoice	n/c	
5/3/2021	Review and approve Ellingson & Associates revised Q1 2021 invoice	n/c	
5/26/2021	Email S Williams (DOJ) re: modification of Federal Release Agreement	0.25	
6/7/2021	Email G Emerson (RANTOL) advising him to proceed with filing renewal of Wolff/Williams judgment; review draft closing order and add language regarding distribution to policyholder claimant if restitution is collected in excess of Class 2 claim; update closing exhibits	2.00	
6/9/2021	Review POC's that were allowed at Class 3 to determine how to handle in closing application; review draft of closing application and forward to A Barbera (OPCIGA) for her review and confirmation of claim value	1.50	
6/10/2021	Modify draft of closing application to include approval of assistant receiver fees	0.25	
6/14/2021	Review draft closing application and forward to staff with exhibits for review and comment; discuss edits with Debra	0.50	
6/17/2021	Final review of draft of closing application and exhibits; email draft of closing application and exhibits to G Emerson (RANTOL) for review and comment	0.25	
6/25/2021	Review email from G Emerson (RANTOL) re: draft closing application; telephone call with G Emerson (RANTOL) re: Triunion judgment; respond to D Ellingson (E&A) re: Triunion judgment	0.75	
7/7/2021	Research storage inventory, electronic files and emails for items relevant to CJ-2005-4489 judgment and respond to G Emerson (RANTOL).	2.00	

TOTAL HOURS	14.50	0.00
TOTAL FEES	1,087.50	
Less Base Pay	510.11	
Balance Due	<u>577.39</u>	

Exhibit 4

OKLAHOMA RECEIVERSHIP OFFICE INC
Estate: Top Flight 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 judgment to Oklahoma Property & Casualty Insurance Guaranty Association
Make final distribution of remaining estate assets
Dissolve corporation

Post-Closing Budget	
Separate Expenses:	
Assistant Receiver Fees	2,535.00
Special Deputy Fees	3,977.52
Legal Fees	3,200.00
Tax Preparer	7,000.00
Document Storage	7,860.05
Document Destruction	4,982.06
Corporate Dissolution	50.00
Postage	50.00
Office Expense	250.00
Travel Expense	70.00
Total Separate Expenses	29,974.63
ORO Common Expenses	36,000.00
<i>Projected Closing Budget</i>	65,974.63
<i>Funding Requested</i>	66,000.00

Exhibit 5

TOP FLIGHT INSURANCE COMPANY FINAL DISTRIBUTION - CLASS 2

-- CLASS 2 DISTRIBUTION PERCENTAGE --

LINE

Estate Funds Available for Distribution

2a	Estate Assets available for distribution			
	Assets Held by Estate	\$	71,696.69	\$ 71,696.69
2b	Less reserve for Class 1 Claims			
	Pending Court Approval	\$	2,017.71	
	Closing Budget (Exhibit 4)	\$	66,000.00	
2c	Equals funds available for distribution to Class 2 and lower			<u>\$ 3,678.98</u>

Class 2 Liability

2d	Guaranty Fund Class 2 - OPCIGA	100.000%	\$ 251,023.16	
2e	Other Guaranty Fund Class 2	0.000%	-	
2f	Total Class 2 Liability	<u>100.000%</u>		<u>\$ 251,023.16</u>

Class 2 Distribution Percentage

2g	Distribution Percentage for Class 2			
	= line 2c divided by line 2f		1.47%	
2h	Maximum Allowable Distribution Percentage		100.00%	
2i	Final Distribution Percentage			
	= lesser of line 2g or line 2h, limited to zero if negative			<u>1.47%</u>

-- DISTRIBUTION AMOUNT ON CLASS 2 --

LINE

2j	Class 2 - inception-to-date	\$	251,023.16	
	= amount per line 2d			
2k	Final Distribution Percentage		1.47%	
	= amount per line 2i			
2l	Total Class 2 Distribution			<u>\$ 3,678.98</u>

-- CLASS 2 CLAIMS FINAL DISTRIBUTION --

LINE

2m	Total Class 2 Distribution	\$	3,678.98	
	= amount per line 2l			
2n	Less Class 2 Early Access Distributions	\$		
2o	Final Class 2 Distribution			<u>\$ 3,678.98</u>