

IN THE CHANCERY COURT OF THE STATE OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY

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STATE OF TENNESSEE, ex rel.)
JULIE MIX MCPEAK,)
Commissioner of Commerce and)
Insurance for the State of Tennessee)
)
Petitioner,)
)
v.)
)
ESTATE OF CHEROKEE f/k/a)
CHEROKEE INSURANCE COMPANY)
)
Respondent.)

No. 84-1460-III

COPY

MOTION FOR APPROVAL OF (1) THE ASSIGNMENT OF CHEROKEE'S CLAIM IN THE MISSION RECEIVERSHIP; (2) THE FINAL DISTRIBUTION OF CHEROKEE ESTATE ASSETS TO GENERAL CREDITOR CLAIMANTS; AND (3) DISCHARGE OF THE RECEIVER

The Commissioner of Commerce and Insurance Julie Mix McPeak in her capacity as statutory Receiver of the Estate of Cherokee (f/k/a Cherokee Insurance Company) ("Cherokee"), along with her Special Deputy Receiver Jeanne Barnes Bryant, hereby moves this Court for an order approving the assignment of Cherokee's claim in the Mission Insurance Companies Trust receivership in exchange for a cash payment of \$97,636.02 to be made within three (3) business days of the entry of the Court's order of approval. As explained further below, the Receiver has determined that it will be more economic to receive funds now and proceed with making the final distribution rather than continuing to incur administrative expenses for the next year or so until the Mission receivership makes its final distributions to Cherokee and the other claimants in its receivership.

Additionally, the Receiver respectfully requests that the Court authorize the Special Deputy Receiver to make the final distribution of estate assets to the allowed general creditor claimants in the Cherokee receivership pursuant to the Final Plan (filed on July 28, 1995 and approved by Court Order on August 22, 1995) ("Final Plan")¹. As further explained below, all allowed policy related claims have been paid in full, and the U. S. Department of Housing and Urban Development has released the receivership from any potential liability associated with any future policy related claims. The Receiver is seeking to distribute \$1,097,000.00 of the Cherokee estate assets to the approved general creditor claimants, who received partial, pro rata distributions in late 1998 or early 1999 in the amount of approximately 14.33% of the approved claim amounts. If this proposed final distribution is approved, the general creditor claimants as set forth herein will receive approximately an additional 2.22% of their total approved claim amounts, making their total distribution equal to approximately 16.55% of their total approved claim amounts.

The Receiver further requests that the Court enter an order directing the Receiver, upon completion of the closure activities set forth in this Motion, to submit a Notice and Final Order of Discharge to terminate the receivership and discharge the Receiver analogous to Tenn. Code Ann. § 56-9-334(a).

An affidavit of Special Deputy Receiver Jeanne Barnes Bryant in support of this Motion has been filed contemporaneously herewith and is incorporated herein by reference. Additionally, in support of this Motion, the Receiver states that, based on the

¹ See Final Plan for Concluding the Cherokee Insurance Company Receivership (filed on July 28, 1995); see also Order Setting Bar Date for the Filing of Claims and Approving the Final Plan for Concluding the Cherokee Insurance Company Receivership (entered on Aug. 22, 1995). An Appendix is being filed with the Court that contains copies of the older orders and filings referenced in this Motion.

following, the remaining receivership estate assets are ready to be distributed, and then the receivership is ready to be closed.

1. The Cherokee Insurance Company was placed into voluntary Rehabilitation in 1984. The Commissioner of the Tennessee Department of Commerce and Insurance is the statutory receiver. Commissioner McPeak has appointed Jeanne Barnes Bryant to serve as the Special Deputy Receiver of this receivership effective January 29, 2013.

2. Cherokee issued insurance policies and policies of reinsurance. From March 1, 1983 through May 31, 1985, Cherokee insured the U.S. Department of Housing and Urban Development's ("HUD") inventory of defaulted low-income housing projects in all fifty (50) states. Lead paint claims of minors represented the longest potential liability of Cherokee. Based on at least one state's twenty-one (21) year statute of limitations period, a potential plaintiff could have brought an action against HUD through May 31, 2006.²

3. The Court established January 20, 1996 as the bar date for filing claims against Cherokee and approved a final plan for concluding the Cherokee receivership, which included the sale of the corporate charter and insurance licenses and distribution of the estate assets, the process for establishing and paying the general creditor claimants, and closing the receivership. *See* Order Setting Bar Date for the Filing of Claims and Approving the Final Plan for Concluding the Cherokee Insurance Company Receivership (entered on Aug. 22, 1995); *see also* Final Plan for Concluding the Cherokee Insurance Company Receivership (filed on July 28, 1995).

² At least one state (Alabama) had a twenty-one (21) year limitations period.

4. In 1997, Cherokee's corporate charter and certificates of authority to conduct the business of insurance in 18 states were sold for \$500,000.00. *See Weed Aff.*, ¶ 4 (filed on Oct. 23, 1998). The Court ordered that the entity be renamed the Estate of Cherokee for purposes of the receivership going forward. *See Order* (entered on Feb. 21, 1997).

5. During the course of the receivership, over 8,000 policy related claims were managed, processed, and paid at 100% of the approved amount based on the analogous Class 2 priority pursuant to Tenn. Code Ann. § 56-9-330. *See Weed Aff.*, ¶ 3 (filed on Oct. 23, 1998); *see also Weed Aff.*, ¶ 3 (filed on July 28, 1995).

6. In a letter to Cherokee in 1998, HUD asserted that, under a Federal Priority Statute, 31 U.S.C.A. § 3713, HUD could continue to make claims against Cherokee after the receivership claims bar date and that those claims should be afforded priority over general creditors' claims. Absent a court order or a release from HUD, the receivership would be exposed to potential liability if the Receiver distributed assets and did not retain assets sufficient to cover any future HUD claims. *See 31 U.S.C.A. § 3713(b)*.

7. In November 1998, the Court granted the Receiver's motion to establish reserves for potential HUD claims and the estimated Class 1 administrative expenses to close the receivership estate and to allow the distribution of remaining receivership estate assets to the approved general creditor claimants, which were primarily insurance companies that Cherokee had reinsured. *See Order* (entered on Nov. 17, 1998). Approximately \$7 million was distributed to the approved general creditor claimants with approved claims totaling approximately \$49,575,784.00, providing the general creditor

claimants with approximately 14.33% of their approved claim amounts.³ The receivership remained open to receive and handle any claims arising from the HUD policy.

8. As of December 2002, no HUD claims had been filed. The receivership estate was incurring administrative expenses to store records, so the Receiver obtained permission from the Court on January 9, 2003, for the matter to be administratively closed, for non-essential records to be destroyed, and for the Receiver to file a final order upon the expiration of the applicable statutes of limitations that may affect HUD claims.

9. Upon the passage of May 31, 2006 and the twenty-one year statute of limitations, there remained ambiguity regarding the notice provision of HUD's policy, and the Receiver was unable to determine a date certain after which the receivership could distribute the remaining assets without the potential liability of HUD asserting a later priority claim. After multiple attempts, the Receiver was successful in obtaining a release of liability from HUD in connection with the policy that Cherokee issued to HUD in the mid-1980s. *See* Revised and Substituted Status Report, Exhibit 1 (Letter from Beverly J. Miller, Director, Office Asset Management, HUD, to Robyn E. Smith (dated Apr. 9, 2008) & Release from Liability) (filed on May 29, 2008). The HUD release from liability became effective on June 1, 2009.

10. As the potential liability associated with future HUD claims has been resolved and all approved policy related claims have been paid in full,⁴ the Receiver and

³ The Amended Report and Recommendation of Valuation of General Creditor Claims Filed with the Estate of Cherokee that sets forth the general creditor claims and the approved claim amounts was filed with the Court on October 3, 1997, and was approved by Order of the Court entered on November 3, 1997.

⁴ There are no other claims to be paid in this receivership other than the remaining unpaid general creditor claims and the administrative expenses through closure of the receivership.

Special Deputy Receiver recommend that a final distribution be made pro rata to general creditor claimants as set forth herein and as contemplated in the Court-approved Final Plan.

11. **Marshalling Assets:** Cherokee's demise was brought about primarily as a result of the failure of a number of other insurance companies with which Cherokee had business relationships. Cherokee has been a creditor in the receiverships of several of these companies. Since 1998, Cherokee has accumulated approximately \$1 million from distributions that it has received from claims filed in these other companies' receiverships. *See* Tasks Required for Cherokee's Termination, at 3 (filed on Jan. 17, 2007).

12. **Mission Claim:** Cherokee has a claim pending in the California receivership of Mission Insurance Companies Trust ("Mission") and valued with an approved amount of approximately \$350,000.00. The Mission receivership has previously made distributions in the amount of approximately 50% of the approved claim amount. Based on a recent conversation that Special Deputy Bryant had with the California receiver in the Mission receivership, Special Deputy Bryant does not anticipate that the Mission receivership will make any additional distributions on this claim in 2014 or immediately thereafter.

13. As a result, the Special Deputy Receiver contacted the companies that had expressed interest in the past of purchasing an assignment of Cherokee's claim in the Mission receivership. These companies were given the opportunity to submit their best offer to purchase Cherokee's assignment of its claim in the Mission receivership. Five (5) offers were received, and the highest and best offer was received from Liquidity

Solutions, Inc. in the amount of \$97,636.02. The Receiver and Special Deputy Receiver believe that acceptance of this offer for the assignment of Cherokee's claim in the Mission receivership and receiving money into the Cherokee estate that can be distributed to its remaining general creditor claimants is more beneficial to the receivership than keeping the receivership open and continuing to incur administrative expenses for at least the next year until the Mission receivership makes its final distribution on Cherokee's claim.

14. The Receiver and Special Deputy Receiver respectfully request that the Court approve the assignment of Cherokee's claim in the Mission receivership and allow the \$97,636.02 proceeds to be included in the total estate assets available for distribution to the approved general creditor claimants of the Cherokee receivership.

15. **Withdrawal of Certain General Creditor Claims:** Because of the age of this receivership, the general creditor claimants were mailed W-9s by previous counsel to obtain corrected address and other information. As a result of these mailings, the claimants identified as having changes in Exhibit 2 to the Affidavit of Special Deputy Receiver Bryant (filed contemporaneously herewith) notified the receivership of name changes, dissolutions, and acquisitions of previously approved claimants. Two (2) claimants requested that their distributions be split and issued to entities named in their original Proofs of Claim. The Receiver has noted these changes in Exhibit 2.

16. Additionally, the receivers of three (3) claimants requested that three (3) Proofs of Claims be withdrawn and that they not receive any additional distributions because the claimants had been liquidated through other state receivership processes and the estates had been closed. These claimants are noted at the bottom of Exhibit 2 to the

Affidavit of Special Deputy Receiver Bryant (filed contemporaneously herewith). For purposes of calculating the final distribution, the approved values of these withdrawn Proofs of Claim have been removed from the total approved amount of the general creditor Proofs of Claim, leaving the total approved value of the general creditor Proofs of Claim for purposes of this final distribution as approximately \$49,437,455.09. *See* Bryant Aff., Exhibits 1 & 2 (filed contemporaneously herewith).

17. The Special Deputy Receiver has determined, and the Receiver concurs, that all of these requested changes should be made to facilitate the final distribution and lessen the amount of potentially unclaimed distribution checks. To the extent that it is necessary, the Receiver respectfully requests that the Court approve the changes identified and presented in Exhibit 2 to the Affidavit of Special Deputy Receiver Bryant filed contemporaneously herewith.

18. **Final Distribution to General Creditor Claimants:** The Receiver, pursuant to her statutory authority, has determined that all of the known estate assets that are available and/or profitable to pursue have been marshaled into the estate and should be distributed at this time pro rata to the general creditor claimants pursuant to the Final Plan. This Motion sets forth the proposed amount of the final distribution after the anticipated amount for the remaining Class 1 administrative expenses through closure has been withheld.

19. The Cherokee estate currently has approximately \$1,138,648.40 in total net assets. *See* Bryant Aff., Exhibit 1 (filed contemporaneously herewith).⁵

⁵ The \$1,138,648.40 is the total of the "Net Assets 04-30-13" amount of \$1,041,012.38 and the "Estimated Post 04-30-14 Receipts" of \$97,636.02.

20. The Special Deputy Receiver on behalf of the Receiver estimates that approximately \$41,648.40 will be needed to cover Class 1 administrative expenses through the close of the receivership, leaving \$1,097,000.00 available for distribution to remaining general creditor claimants using a pro rata percentage of approximately 2.22% of the total approved general creditor claim amount for purposes of the final distribution (i.e., \$49,437,455.09).⁶ Exhibit 2 to the Affidavit of Special Deputy Receiver Jeanne Barnes Bryant (filed contemporaneously herewith) sets forth the amount of the proposed final distribution to be made to each general creditor claimant. Upon payment of the proposed final distribution, which is approximately an additional 2.22% of the total approved general creditor claim amount for purposes of this distribution, each remaining general creditor claimant will have received approximately 16.55% of the total approved value of each general creditor claim.

21. The proposed final distribution ensures that each remaining general creditor claimant will receive the same pro rata distribution. At this time, the general creditor claims will not be paid in full.

22. **Closure of Receivership:** All assets of the Cherokee estate justifying the expense of collection and distribution will have been distributed upon the Court's approval of this Motion. Thus, the Receiver requests that the Special Deputy Receiver be authorized to perform the closure activities described in paragraphs 23 through 30 in this Motion. Upon completion of these closure activities, the Receiver will submit a Notice and Final Order of Discharge for entry by the Court.

⁶ Exhibit 1 to the Affidavit of Special Deputy Receiver Jeanne Barnes Bryant (filed contemporaneously herewith) sets forth the estimated administrative expenses through the closure of the receivership and the amount of estate assets available for distribution. The amount of money to be received for the assignment of the Mission claim if approved by the Court has been included in the amount available for distribution for the Court's consideration.

23. **Unclaimed Property:** If there are any uncashed checks at least ninety (90) days after the Special Deputy Receiver makes the final distributions proposed in this Motion, the Receiver respectfully requests that, analogous to Tenn. Code Ann. § 56-9-333(a), the Commissioner be allowed either to transfer any unclaimed funds to the Unclaimed Property Division of the State Treasurer or to elect, without further court order, to hold the unclaimed funds for a period of two (2) years, and if such funds remain unclaimed at the end of the two-year period, to hold and deposit the funds, without further court order, in the closed estate no asset fund for the purpose of defraying the costs and expenses of the administration of other insolvent insurers for which there are insufficient assets to fund the costs and expenses of administration of a receivership pursuant to Tenn. Code Ann. §§ 56-9-101, *et seq.* The Receiver will explain how she has determined to handle any unclaimed property in the Notice and Final Order of Discharge that the Receiver will file upon completion of the closure activities.

24. **Destruction of Records:** The Receiver has determined that there is no benefit to the receivership to incurring any additional costs of maintaining the records that are in the Receiver's possession, custody, or control once the final distributions have been made and the closure activities have been performed except to maintain necessary records for tax purposes for three (3) years. Therefore, the Receiver respectfully requests, analogous to Tenn. Code Ann. §56-9-336, that the Court order any remaining documents that are in the Receiver's possession, custody, or control and are being maintained for tax purposes to be destroyed three (3) years after the entry of the Court's Order approving this Motion and that the Court order all other records to be destroyed by the receivership prior to the Receiver filing notice with the Court that all closure activities

have been completed. In the event that it is determined that any records not necessary for tax purposes must be maintained by the State, these records will be transferred to the State for storage without cost to the receivership. The Receiver will explain to the Court whether these records have been destroyed or transferred to the State in the Notice and Final Order of Discharge that the Receiver will file upon completion of the closure activities.

25. **Payment of Class 1 Administrative Expenses and Approval Through Closure:** The Court has approved, pursuant to Tenn. Code Ann. § 56-9-303(a), the Receiver's determination to pay from the receivership estate the Class 1 administrative fees of the Special Deputy Receiver, outside legal counsel, and third party contractors through March 31, 2014.

26. The Receiver estimates that administrative fees and expenses to be incurred through the final discharge of the Receiver, assuming that no unexpected events occur, will be approximately \$41,648.40. An itemized list of the estimated fees and expenses is attached as Exhibit 1 to the Affidavit of Special Deputy Receiver Bryant (filed contemporaneously herewith).

27. The actual fees of the Special Deputy Receiver, outside counsel, and third party contractors incurred through the closure of this receivership will be submitted to the Receiver and her staff for review and approval in accordance with the Department's administrative guidelines pursuant to Tenn. Code Ann. § 56-9-303(a). Only the actual fees that are determined by the Receiver upon proper review to be reasonable will be approved and paid by the Receiver from the Cherokee estate. The Receiver requests that the Class 1 administrative fees of the Special Deputy Receiver, outside legal counsel, and

third party contractors through the closure of the receivership that the Receiver determines upon proper review to be reasonable and payable be deemed approved by the Court pursuant to Tenn. Code Ann. § 56-9-303(a), and that no further fee motions be required by the Court.

28. If the actual Class 1 administrative expenses incurred through closure are less than the estimated amount set forth in Exhibit 1 to the Affidavit of Special Deputy Receiver Bryant (filed contemporaneously herewith), the Receiver requests that, pursuant to Tenn. Code Ann. § 56-9-334(a), any remaining monies in the estate be transferred to the closed estate no asset fund maintained at the direction of the Commissioner of the Tennessee Department of Commerce and Insurance analogous to Tenn. Code Ann. § 56-9-333(a) to assist with administrative expenses of receiverships that lack sufficient assets to fund administrative costs of proceedings under the Tennessee Rehabilitation and Liquidation Act, §§ 56-9-101, *et seq.*

29. **Taxes:** Tax returns through tax year 2013 have been filed with the Internal Revenue Service (“IRS”). The 2014 tax returns will be filed as soon as possible after the final distribution checks are issued assuming this Motion is granted.

30. In November 1984, a one hundred dollar (\$100) cash restraining bond was filed on behalf of the receivership. The Clerk is holding the \$100 and needs direction on how to disburse the money upon closure of this matter. The Receiver respectfully requests that the Court direct the Clerk to use the \$100 to pay for all or a portion of the remaining court costs. In the event that court costs owed by the receivership are less than \$100, the Receiver respectfully requests that the Clerk be directed to disburse any remaining funds to the Estate of Cherokee upon entry of a final order in this case.

31. Special Deputy Receiver Bryant will cause this Motion and her Affidavit along with its Exhibits (filed contemporaneously herewith) to be mailed to the general creditor claimants identified in Exhibit 2 to her Affidavit.⁷

32. This Motion seeks relief that will be relied upon in making the final distribution to general creditor claimants and closing the receivership and discharging the Receiver. To provide certainty regarding the relief granted, the Receiver requests that, pursuant to Tenn. R. Civ. P. 54.02, the Court expressly find that there exists no just reason for delay and that any Order granting this motion be entered as final regarding the matter addressed in that Order.

NOW, THEREFORE, for the foregoing reasons, the Receiver respectfully requests that the Court enter an order granting this Motion and:

1. Approving the assignment of Cherokee's claim in the Mission receivership in exchange for a payment of \$97,636.02;
2. Approving the changes made to the general creditor claimants, including the withdrawal of three (3) Proofs of Claim, as noted in Exhibit 2 to the Affidavit of Special Deputy Receiver Jeanne Barnes Bryant (filed contemporaneously herewith);
3. Authorizing the Receiver, pursuant to Court-approved Final Plan, to make the final distribution of approximately \$1,097,000.00 pro rata to the approved remaining general creditor claimants (which is approximately an additional 2.22% pro rata final distribution) as set forth in Exhibit 2 to the

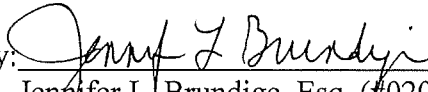
⁷ The Appendix will not be mailed to the claimants but will be posted on the Receivership Management Inc.'s website (www.receivermgmt.com).

Affidavit of Special Deputy Receiver Jeanne Barnes Bryant (filed contemporaneously herewith);

4. Authorizing the Receiver to reserve approximately \$41,648.40 to pay the final administrative costs necessary to close the Liquidation;
5. Approving, pursuant to Tenn. Code Ann. § 56-9-303(a), the Receiver's payment of all Class 1 administrative fees and expenses for the Special Deputy Receiver, outside legal counsel, and third party contractors to perform the final distribution and closure activities set forth in this Motion that the Receiver determines to be reasonable and payable after the proper administrative review, and requiring no additional fee motions to be filed with the Court;
6. Directing the Clerk to use the \$100 from the cash restraining bond that was filed in November 1984 and that the Clerk has been holding to pay for all or a portion of the remaining court costs, directing the Clerk to disburse any remaining funds to the Estate of Cherokee upon entry of a final order in this case if court costs are less than \$100, and ordering the Receiver to pay any remaining court costs if court costs are greater than \$100;
7. Authorizing, after the payment of the final distribution and all Class 1 administrative expenses and fees, the transfer, analogous to Tenn. Code Ann. § 56-9-334(a), of any remaining estate assets to the closed estate no asset fund maintained at the direction of the Commissioner of the Tennessee Department of Commerce and Insurance pursuant to Tenn. Code Ann. § 56-9-333(a);

8. Allowing the Commissioner either to transfer any unclaimed funds to the Unclaimed Property Division of the State Treasurer or without further court order to elect to hold any unclaimed funds for a period of two (2) years and at the end of the two-year period to hold and deposit the funds in the closed estate no asset fund analogous to Tenn. Code Ann. § 56-9-333(a);
9. Authorizing the Receiver, analogous to Tenn. Code Ann. § 56-9-336, to destroy the records of the receivership that are being maintained for tax purposes three (3) years after entry of the Court's Order granting this Motion and to either destroy or transfer to the State for storage at no cost to the receivership all other records prior to the Receiver filing notice with the Court that all closure activities have been completed;
10. Ordering, upon completion of the closure activities set forth in this Motion, the Receiver to file Notice and Final Order of Discharge with the Court that will terminate the Cherokee receivership and discharge the Receiver, along with her staff and current and prior statutory receivers and special deputy receivers, finally and fully from all duties as the Receiver of the Cherokee receivership analogous to Tenn. Code Ann. § 56-9-334(a); and
11. Finding that there is no just reason for delay and instructing the Clerk and Master to enter any Order granting this Motion as final regarding all matters addressed therein pursuant to Tenn. R. Civ. P. 54.02.

Respectfully submitted,

By: 
Jennifer L. Brundige, Esq. (#020673)
LUNA LAW GROUP, PLLC
333 Union Street, Suite 300
Nashville, TN 37201
(615) 254-9146
*Special Counsel to Commissioner
McPeak as Statutory Receiver*

THIS MOTION IS SET TO BE HEARD ON FRIDAY, JULY 11, 2014, AT 9:00 A.M. OR AS SOON THEREAFTER AS IT MAY BE HEARD. IF NO RESPONSE IS TIMELY FILED AND SERVED, THE MOTION SHALL BE GRANTED WITHOUT FURTHER HEARING.

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing has been forwarded via U.S. Mail, postage pre-paid, to the following on this the 27th day of June, 2014.

Sarah Hiestand, Esq.
Senior Counsel, Financial Division
Office of the Tennessee Attorney General and Reporter
P.O. Box 20207
Nashville, TN 37202-0207

