

**COPY**

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

LESLIE A. NEWMAN, )  
 Commissioner of the Tennessee )  
 Department of Commerce and Insurance, )  
 )  
 Petitioner, )  
 )  
 v. )  
 )  
 NATIONAL FOUNDATION OF )  
 AMERICA, a Tennessee corporation, )  
 RICHARD K. OLIVE, an individual, )  
 SUSAN L. OLIVE, an individual, )  
 BREANNA MCINTYRE, an individual, )  
 )  
 Respondents. )

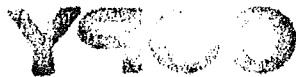
No. 07-1163-IV

**FILED**  
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 CLERK & MASTER  
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 D.C. & M.

**MOTION TO APPROVE FINAL  
DISTRIBUTION TO CLASS 2 CLAIMANTS**

Leslie A. Newman, Commissioner of the Department of Commerce and Insurance and Liquidator of National Foundation of America (“NFOA”), along with her Special Deputy Liquidator Paul Eggers, whose affidavit is submitted herewith, moves this Court for an order authorizing the Special Deputy Liquidator, pursuant to Tenn. Code Ann. §56-9-332, to distribute \$861,385.00 of NFOA’s assets to pay remaining Class 2 claims totaling \$4,077,865.99 after the first and second partial interim distributions, by making a pro rata final distribution at the rate of an additional 4.4% of the approved total claim amount. Upon receipt of the proposed final distribution, each Class 2 claimant will have received in total an 83.4% pro rata payment of the total approved claim amount.

In support of this Motion, the Liquidator relies upon the following and upon the Affidavit of Special Deputy Liquidator Paul Eggers along with its Exhibits 1-3 (collectively, the



“pleadings”) that are being filed contemporaneously herewith and are incorporated herein by reference.

**First Partial Interim Distribution Made To Class 2 Claimants**

1. On September 11, 2007, the Court ordered the conversion of the Rehabilitation of NFOA to the Liquidation of NFOA. See Final Order of Liquidation and Injunction (“Liquidation Order”) (entered Sept. 11, 2007).

2. On May 2, 2008, the Liquidator filed a motion requesting that this Court approve the Liquidator’s report and recommendation on the valuation of claims pursuant to Tenn. Code Ann. § 56-9-331 and authorize the Special Deputy Liquidator to make a partial interim distribution of NFOA’s assets to pay Class 2 claims pursuant to Tenn. Code Ann. § 56-9-332.

3. The Liquidator’s motion and its supporting affidavit established that the total amount of all Class 2 claims was approximately \$19,418,409.40, that the NFOA estate had \$15,202,097.00 available in cash assets, and that the Special Deputy Liquidator on behalf of the Liquidator recommended that \$12,621,966.11 be immediately distributed to Class 2 claimants using a pro rata percentage of 65% of the value of the claims. After making the proposed partial interim distribution, NFOA established that it would have approximately \$2,580,130.89 remaining in cash assets.

4. Upon receiving no objections to the motion, on May 21, 2008, the Court entered an order approving the Liquidator’s determination of the valuation of claims and approving the partial interim distribution to Class 2 claimants as recommended by the Liquidator.

5. The Court found that the partial interim distribution ensured that each Class 2 claimant would receive the same pro rata distribution and that no subclasses would be created within Class 2 as required by Tenn. Code Ann. § 56-9-330. Further, the Court determined that

the partial interim distribution plan ensured that adequate funds were retained to pay Class 1 administrative costs and expenses of the Liquidation going forward and to pay the same pro rata distribution to any future claimants determined to have Class 2 payment priority.

6. In accordance with the Court's Order, the Special Deputy Liquidator sent by first class U.S. mail the partial interim distribution checks to Class 2 claimants on or around June 25, 2008.<sup>1</sup>

#### **Second Partial Interim Distribution Made to Class 2 Claimants**

7. On November 7, 2008, the Liquidator filed a motion requesting that this Court authorize the Special Deputy Liquidator to make a second partial interim distribution of NFOA's assets to pay Class 2 claims pursuant to Tenn. Code Ann. § 56-9-332.

8. The Liquidator's motion and its supporting affidavit established that the total amount of all remaining Class 2 claims after payment of the first partial distribution was \$6,796,443.29, that the NFOA estate had \$3,798,596.24 available in cash assets for distribution, and that the Special Deputy Liquidator on behalf of the Liquidator recommended that \$2,718,577.30 be immediately distributed to Class 2 claimants using a pro rata percentage of an additional 14% of the approved total claim amount. After making the second partial interim distribution, NFOA established that it would have approximately \$1,080,018.94 remaining in cash assets.

9. Upon receiving no objections to the motion, on November 24, 2008, the Court entered an order approving the second partial interim distribution to Class 2 claimants as recommended by the Liquidator.

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<sup>1</sup> The partial interim distribution to Thomas S. Baconrind in the amount of \$31,695.98 was stayed upon order of the Court dated August 6, 2008. See ¶ 12 herein.

10. The Court found that the partial interim distribution ensured that each Class 2 claimant would receive the same pro rata distribution and that no subclasses would be created within Class 2 as required by Tenn. Code Ann. § 56-9-330. Further, the Court determined that the partial interim distribution plan ensured that adequate funds were retained to pay Class 1 administrative costs and expenses of the Liquidation going forward and to pay the same pro rata distribution to any future claimants determined to have Class 2 payment priority.

11. In accordance with the Court's Order, the Special Deputy Liquidator sent by first class U.S. mail the partial interim distribution checks to Class 2 claimants at the beginning of January 2010.<sup>2</sup>

**Offsetting of Debts and Credits of Thomas S. Baconrind**  
**Pursuant to Tenn. Code Ann. § 56-9-319**

12. On July 9, 2008, the Liquidator filed a motion to stay the partial interim distribution to Thomas S. Baconrind in the amount of \$31,695.98. Mr. Baconrind invested personal assets with NFOA, and he also received commissions totaling \$41,904.99 from NFOA assets for the NFOA illegal annuity contracts that he marketed to his clients and other persons. On August 6, 2008, the Court granted the Liquidator's motion and has stayed the distribution on the Baconrind claim until the Liquidator's demand for disgorgement of commissions is resolved.

13. As part of the Order approving the second partial interim distribution, the Court authorized the Liquidator to stay the second partial interim distribution to Thomas S. Baconrind in the amount of \$6,826.83.

14. The Liquidation is entitled to disgorgement of the commissions that Mr. Baconrind improperly received from the marketing and sales of NFOA illegal insurance products

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<sup>2</sup> The second partial interim distribution to Thomas S. Baconrind in the amount of \$6,826.83 was stayed upon order of the Court dated November 24, 2008. See ¶ 13 herein.

to the victims of NFOA. Mr. Baconrind has not returned any of his commissions to the Liquidation. On December 5, 2008, the Liquidation provided notice to Mr. Baconrind that, if he did not disgorge commissions in the amount of \$41,904.99 within thirty days, the Liquidator would offset the total amount of the first and second distributions (\$38,522.81) against the commissions owed by Mr. Baconrind and that future distributions would be applied on a pro rata basis to offset the remaining amount (\$3,382.18) owed by Mr. Baconrind until the amount owed is paid in full. See Exhibit 3 to P. Eggers' Affidavit. Mr. Baconrind has not responded to this letter nor made any payments to the Liquidation.

15. Pursuant to Tenn. Code Ann. § 56-9-319, the Liquidator is offsetting the amount of distributions owed by the Liquidation to Thomas S. Baconrind as a Class 2 claimant of the Liquidation against the amount of commissions owed by Mr. Baconrind to the Liquidation.

16. The first partial distribution amount of \$31,695.98, the second partial interim distribution amount of \$6,826.83, and the proposed third partial interim distribution amount of \$2,163.09 (as set forth in Exhibit 1 to P. Eggers' Affidavit) do not exceed the amount of debt (\$41,904.99) owed to the Liquidation by Mr. Baconrind. Therefore, no distributions are owed by the Liquidation on Mr. Baconrind's Class 2 claim. The total offset amount of \$40,685.90 has been included as part of the estate assets available for payment of the proposed final distribution and of Class 1 administrative expenses through the close of the Liquidation.

**Proposed Final Distribution to Class 2 Claimants**  
**Pursuant to Tenn. Code Ann. § 56-9-332**

17. The Liquidator, 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 to the Class 2 claimants whose average age was approximately 76 at the beginning of the receivership and who are in need of the proposed final

distributions to assist with payment of living expenses, medical expenses, and tax penalties that are being assessed against them by the Internal Revenue Service.

18. The NFOA estate currently has \$1,087,385.00 in cash assets.<sup>3</sup>

19. The total amount of all remaining, unpaid Class 2 claims after the first and second partial interim distributions is approximately \$4,077,865.99.

20. The Special Deputy Liquidator on behalf of the Liquidator estimates that \$226,000.00 will be needed to cover Class 1 administrative expenses through the close of the Liquidation, leaving \$861,385.00 available for distribution to Class 2 claimants using a pro rata percentage of 4.4% of the approved total Class 2 claim amount. Exhibit 1 to the Affidavit of Paul Eggers sets forth the amount of the proposed final distribution to be made to each Class 2 claimant. **Upon payment of the proposed final distribution, which is an additional 4.4% of the approved total Class 2 claim amount, each Class 2 claimant will have received an 83.4% pro rata payment of the total approved value of each Class 2 claim.**

21. The proposed final distribution ensures that each Class 2 claimant will receive the same pro rata distribution and that no subclasses will be created within Class 2 as required by Tenn. Code Ann. § 56-9-330.

22. At this time, Class 2 claims will not be paid in full. Thus, the claims below Class 2 will not receive any distributions.

23. The Liquidation has received a request and an affidavit of heirship from the beneficiaries of deceased Class 2 claimant, Willie Boulton Clark, asking the Liquidation to make the approved final distribution payment on the Class 2 claim in the names of people other than

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<sup>3</sup> While the Schedule of Assets and Liability attached as Exhibit 2 to P. Eggers' Affidavit shows \$1,131,541.00 as cash assets of the estate, \$44,156.00 of this amount are outstanding distribution checks made to Class 2 claimants during the second partial interim distribution which have not been cashed by the Class 2 claimants. If these checks remain outstanding prior to closure of the Liquidation, the Liquidator will take the necessary steps to turn this money over to the Unclaimed Property Division of the Tennessee Treasury Department.

the claimant or the claimant's estate. The Liquidator is filing a separate motion requesting that this Court enter an order directing to whom the Liquidator must make the final pro rata distribution on this Class 2 claim. As the pro rata distribution amounts proposed in the Liquidator's motion for final distribution will not be affected, the Liquidator does not believe that the issue concerning this claim should delay the Liquidator from making the pro rata final distributions to all other Class 2 claimants as set forth in Exhibit 1 of the Affidavit of Paul Eggers if approved and ordered by this Court. The Liquidator will hold any approved pro rata final distribution payment for the Willie Boulton Clark claim until the Liquidator receives an order from the Court directing the Liquidator how to proceed with the final distribution on the Willie Boulton Clark claim.

24. Once the final distribution has been made, the Liquidator will proceed with winding down the Liquidation. When these activities are close to completion, the Liquidator will seek an order to terminate and discharge the Liquidation.

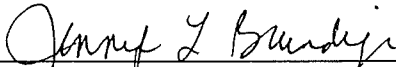
25. As the Liquidation winds down, if the Liquidator should identify additional assets that can profitably be marshaled into the estate and that justify a subsequent distribution, the Liquidation will move this court for approval of a subsequent distribution.

26. In addition to the service list, the Special Deputy Liquidator will cause the pleadings to be served on the claimants of the estate. The Special Deputy Liquidator will also cause the pleadings to be posted on the websites of the NFOA Liquidation and the Tennessee Department of Commerce and Insurance.

NOW, THEREFORE, for the foregoing reasons, the Liquidator respectfully requests that the Court enter an order:

- (1) Approving, pursuant to Tenn. Code Ann. § 56-9-319, the offset of the total pro rata distributions from the first, second, and final distributions on Mr. Baconrind's Class 2 claim in the amount of \$40,685.90 against commissions owed by Mr. Baconrind as agent to NFOA;
- (2) Authorizing the Liquidator, pursuant to Tenn. Code Ann. § 56-9-332, to make a final distribution of \$861,385.00 pro rata to Class 2 claimants as set forth in Exhibit 1 to the Affidavit of Paul Eggers; and
- (3) Authorizing the Liquidator to hold the approved pro rata final distribution for the Willie Boulton Clark claim until the Liquidator receives direction from the Court on how to proceed with the final distribution on this claim.

Respectfully submitted,

By:   
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**THIS MOTION IS SET TO BE HEARD ON FRIDAY, OCTOBER 8, 2010, 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 parties and interested entities listed below on this the 22nd day of September, 2010.

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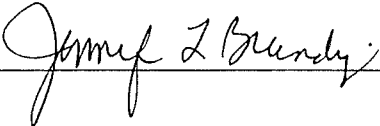
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*Attorney for Richard Clark and Pamela Sue Wheeler*

And all of the Class 2 Claimants Listed on Exhibit 1 to P. Eggers' Affidavit whose addresses are filed with the Court under seal pursuant to the Court's July 24, 2007 and October 10, 2007 Orders.

  
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