

FILED

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 MCPPEAK, )  
 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

**COPY**

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**MOTION FOR APPROVAL OF THE FINAL DISTRIBUTION OF  
 NFOA ESTATE ASSETS TO CLASS 2 CLAIMANTS AND  
 THE DISCHARGE OF THE LIQUIDATOR**

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The Commissioner of Commerce and Insurance Julie Mix McPeak in her capacity as statutory Liquidator of National Foundation of America (“NFOA”), along with her Special Deputy Liquidator Jeanne Barnes Bryant, hereby moves this Court for an order to authorize the Special Deputy Liquidator, pursuant to Tenn. Code Ann. § 56-9-332, to make the final distribution of the remaining NFOA estate assets to the approved Class 2 claimants in this receivership. The Liquidator is seeking to distribute \$104,000.00 of the NFOA estate assets to the approved Class 2 claimants, who have received partial, pro rata distributions in the amount of approximately 83.4% of the approved claim amounts. If this proposed final distribution is approved, Class 2 claimants will receive an additional

0.53% of their total approved claim amounts, making their total distributions equal to approximately 83.97% of their total approved claim amounts.

Upon making the proposed final distribution set forth in this Motion, all assets of the NFOA estate justifying the expense of collection and distribution will have been distributed, and thus, the Liquidator further requests that the Court enter an order directing the Liquidator, 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 Liquidator pursuant to Tenn. Code Ann. § 56-9-334(a).

An affidavit of Special Deputy Liquidator 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 Liquidator states that, based on the following, the remaining NFOA estate assets are ready to be distributed, and then the receivership is ready to be closed.

1. On June 21, 2007, the Court placed NFOA into receivership pursuant to the Insurers Rehabilitation and Liquidation Act, Tenn. Code Ann. §§ 56-9-101, *et seq.*, and the Commissioner of the Tennessee Department of Commerce and Insurance was appointed Receiver of NFOA.

2. On September 11, 2007, this Court converted the rehabilitation of NFOA into a liquidation and appointed the Commissioner as the Liquidator of NFOA pursuant to Tenn. Code Ann. § 56-9-306 and § 56-9-307.

3. Pursuant to Tenn. Code Ann. § 56-9-310(a)(1), the Liquidator appointed Jeanne Barnes Bryant to serve as Special Deputy Liquidator effective January 29, 2013.

4. The NFOA receivership involves Class 2 claimants whose average age was approximately seventy-six (76) at the beginning of this receivership and who had been issued illegal annuity contracts by NFOA.<sup>1</sup>

5. On May 21, 2008, this Court approved the Liquidator's report and recommendation on the valuation of claims pursuant to Tenn. Code Ann. § 56-9-331. The total approved value of Class 2 claims is approximately \$19,418,409.40.

6. Additionally, on May 21, 2008, this Court approved the Liquidator's request to distribute approximately \$12,621,966.11 of NFOA's assets to the approved Class 2 claimants pursuant to Tenn. Code Ann. § 56-9-332, using a pro rata percentage of approximately 65% of the value of the approved Class 2 claims. The Special Deputy Liquidator made the Court-approved partial interim distribution on or around June 25, 2008.<sup>2</sup>

7. On November 24, 2008, the Court approved the Liquidator's recommendation to distribute approximately \$2,718,577.30 of the NFOA estate to the Class 2 claimants as a second partial interim distribution. Each approved Class 2 claimant received an additional pro rata distribution of approximately 14% of the claimant's approved total claim amount. The Special Deputy Liquidator made the Court-approved second interim distribution at the beginning of January 2009.<sup>3</sup>

8. On October 19, 2010, the Court entered an Order approving the Liquidator's proposed 2010 final distribution ("third partial distribution") of \$861,385.00

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<sup>1</sup> A general overview of the claims process and the various claims asserted against NFOA can be found in paragraphs 1 through 12 of the Motion to Approve Liquidator's Report on Class 2 Claims and Approve Partial Interim Distribution to Class 2 Claimants (filed on May 2, 2008).

<sup>2</sup> See Affidavit of Special Deputy Paul Eggers, at ¶ 4 (filed on Sept. 22, 2010).

<sup>3</sup> See *id.* at ¶ 5.

to be distributed pro rata to the approved Class 2 claimants, which was approximately an additional 4.4% of the total approved amount of Class 2 claims. The Special Deputy Liquidator made the Court-approved third partial distribution before the end of the 2010 calendar year.

9. After making these three distributions, each approved Class 2 claimant has been provided approximately a total 83.4% pro rata payment of the total approved value of each Class 2 claim.

10. As explained further below, the Liquidator has determined, based on the Special Deputy Liquidator's recommendation, that there are enough NFOA estate assets available to justify the expense of making an additional final distribution to the approved Class 2 claimants.

11. **Final Distribution to Class 2 Claimants:** Pursuant to Tenn. Code Ann. § 56-9-334(a), the Liquidator has determined that all known assets of the NFOA estate that are available and/or profitable to pursue have been marshaled into the estate, and the remaining NFOA estate assets should be distributed at this time pro rata to the approved Class 2 claimants pursuant to Tenn. Code Ann. § 56-9-332 and § 56-9-330. This Motion sets forth the proposed amount of distribution of the remaining NFOA estate assets ("2014 final distribution") after the anticipated amount of the Class 1 administrative expenses through closure has been withheld.

12. The NFOA estate currently has approximately \$150,618.74 in total net assets. *See* Bryant Aff., Exhibit 1 (filed contemporaneously herewith).

13. The Special Deputy Liquidator on behalf of the Liquidator estimates that \$46,618.74 will be needed to cover Class 1 administrative expenses through the closure

of the receivership, leaving \$104,000.00 available for distribution to Class 2 claimants using a pro rata percentage of approximately 0.53% of the total approved Class 2 claim amount.<sup>4</sup> Exhibit 2 to the Affidavit of Special Deputy Liquidator Jeanne Barnes Bryant (filed contemporaneously herewith) sets forth the amount of the proposed 2014 final distribution to be made to each Class 2 claimant. Upon payment of this proposed 2014 final distribution, which is approximately an additional 0.53% of the total approved Class 2 claim amount, each Class 2 claimant will have received approximately 83.97% of the total approved value of each Class 2 claim.

14. The proposed 2014 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.

15. At this time, Class 2 claims will not be paid in full. Thus, any claims below Class 2 in payment priority (i.e., Class 5 claims) will not receive any distributions.

16. **Offsetting of Debts and Credits of Thomas S. Baconrind Pursuant to Tenn. Code Ann. § 56-9-319:** Thomas S. Baconrind invested personal assets with NFOA and has a Class 2 claim valued at \$48,763.04. Mr. Baconrind 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. The Liquidation is entitled to disgorgement of the commissions that Mr. Baconrind improperly received from the marketing and sales of NFOA illegal insurance products to the victims of NFOA. As Mr. Baconrind has not returned any of his commissions, the Liquidator has obtained Court

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<sup>4</sup> Exhibit 1 to the Affidavit of Special Deputy Liquidator Bryant (filed contemporaneously herewith) sets forth the estimated administrative expenses through closure of the receivership and the amount of net estate assets available for distribution.

approval to offset the amount of the three previous distributions owed by the Liquidation to Thomas S. Baconrind as a Class 2 claimant against the amount of commissions owed by Mr. Baconrind to the Liquidation pursuant to Tenn. Code Ann. § 56-9-319.<sup>5</sup> The first interim distribution amount of \$31,695.98, the second interim distribution amount of \$6,826.83, the third interim distribution amount of \$2,163.09, and the proposed 2014 final distribution amount of \$261.16 (as set forth in Exhibit 2 to the Affidavit of Special Deputy Liquidator Bryant filed contemporaneously herewith) 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 2014 final distribution amount of \$261.16 has been included as part of the estate assets available for payment to the Class 2 claimants.

17. **Distribution for the Willie Boulton Clark Class 2 Claim:** On October 19, 2010, the Court entered an Order authorizing the Liquidator to make the third interim distribution for the Class 2 claim of deceased claimant Willie Boulton Clark to her heirs, the Reverend Richard Clark and Mrs. Pamela Sue Wheeler, in equal shares.<sup>6</sup> The Liquidator will follow this Court Order and issue the proposed 2014 final distribution to the heirs of deceased claimant Willie Boulton Clark (i.e., Reverend Richard Clark and Pamela Sue Wheeler) in equal shares.

18. **Distribution for the Gladys Sabin Class 2 Claim:** On December 20, 2011, the Court entered an Order authorizing the Liquidator to make the second distribution and the third interim distribution for the Class 2 claim of deceased claimant

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<sup>5</sup> See Order Approving Final Distribution to Class 2 Claimants, at 2-3 & 4 (entered on Oct. 19, 2010).

<sup>6</sup> See Order Approving Motion for Direction for Making Final Distribution on Class 2 Claim of Deceased Claimant Willie Boulton Clark, at 2 (entered on Oct. 19, 2010).

Gladys Sabin to her heirs as follows: one-half (1/2) to the Reverend Norman A. Sabin, one-fourth (1/4) to Martha U. Rennau, and one-fourth (1/4) to Charles W. Postma.<sup>7</sup> The Liquidator will follow this Court Order and issue the proposed 2014 final distribution to the heirs of deceased claimant Gladys Sabin (i.e., Reverend Norman A. Sabin, Martha U. Rennau, and Charles W. Postma) in the same manner.

19. **Distribution Process for Making 2014 Final Distributions to Heirs of Deceased Class 2 Claimants:** If Letters Testamentary from a Probate Court are presented to the Liquidation within ninety (90) days of the issuance of the distribution checks, the Special Deputy Liquidator will cause the distribution check to be made to the estate of that deceased Class 2 claimant and will mail the distribution check to the administrator of that deceased claimant's estate. Alternatively, if the deceased claimant's estate is not being probated and the heirs are requesting the Liquidator not to issue the distribution check in the name of the Court-approved Class 2 claimant, the Liquidator will require the heirs to present an Affidavit of Heirship that establishes the Class 2 claimant's death, explains the status of any spouse and all children born to or adopted by the claimant, and directs upon oath how the distributions from NFOA are to be directed. The Liquidator is requesting that the Court enter an order authorizing the Liquidator to make distributions as directed in an Affidavit of Heirship. Further, the Liquidator requests that the Court enter an order discharging the Liquidator, her Special Deputy Liquidator, and their agents from any and all liability associated with any distribution made pursuant to an Affidavit of Heirship.

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<sup>7</sup> See Order Approving Motion for Direction for Making Distributions on Class 2 Claim of Deceased Claimant Gladys Sabin, at 2 (entered on Dec. 20, 2011).

20. **Closure of Receivership:** Pursuant to Tenn. Code Ann. § 56-9-334(a), all assets of the NFOA estate justifying the expense of collection and distribution will be distributed upon the Court's approval of this Motion. Thus, the Liquidator requests that the Special Deputy Liquidator be authorized to perform the closure activities described in paragraphs 21 through 27 in this Motion. Upon completion of these closure activities, the Liquidator will submit a Notice and Final Order of Discharge for entry by the Court.

21. **Unclaimed Property:** If there are any uncashed checks at least ninety (90) days after the Special Deputy Liquidator makes the 2014 final distributions proposed in this Motion, the Liquidator respectfully requests that, pursuant 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 Liquidator will explain how she has determined to handle any unclaimed property in the Notice and Final Order of Discharge that the Liquidator will file upon completion of the closure activities.

22. **Destruction of Records:** The Liquidator has determined that there is no benefit to the receivership to incurring any additional costs of maintaining the records that are in the Liquidator'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 Liquidator respectfully requests, pursuant to Tenn. Code Ann. §56-9-336, that the Court order any remaining documents that are in the Liquidator'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 Liquidator 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 Liquidator 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 Liquidator will file upon completion of the closure activities.

23. **Payment of Class 1 Administrative Expenses and Approval Through Closure:** The Court has approved, pursuant to Tenn. Code Ann. § 56-9-310(a)(4), the Liquidator's determination to pay from the receivership estate the Class 1 administrative fees of the Special Deputy Liquidator, outside legal counsel, and third party contractors through March 31, 2014.

24. The Liquidator estimates that administrative fees and expenses to be incurred through the final discharge of the Liquidator, assuming that no unexpected events occur, will be approximately \$46,618.74. An itemized list of the estimated fees and expenses is attached as Exhibit 1 to the Affidavit of Special Deputy Liquidator Bryant (filed contemporaneously herewith).

25. The actual fees of the Special Deputy Liquidator, outside counsel, and third party contractors incurred through the closure of the receivership will be submitted to the Liquidator and her staff for review and approval in accordance with the Department's administrative guidelines pursuant to Tenn. Code Ann. § 56-9-310(a)(4). Only the actual fees that are determined by the Liquidator upon proper review to be reasonable will be approved and paid by the Liquidator from the NFOA estate. The Liquidator requests that the Class 1 administrative fees of the Special Deputy Liquidator, outside legal counsel, and third party contractors through the closure of the receivership that the Liquidator determines upon proper review to be reasonable and payable be deemed approved by the Court pursuant to Tenn. Code Ann. § 56-9-310(a)(4), and that no further fee motions be required by the Court.

26. 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 Liquidator Bryant (filed contemporaneously herewith), the Liquidator 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 pursuant 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.*

27. **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 2014 final distribution checks are issued assuming this Motion is granted.

Additionally, the Special Deputy Liquidator will cause the IRS Form 1099 to be mailed to each person who receives a reportable payment from the NFOA receivership in 2014.

28. The Special Deputy Liquidator will cause this Motion and her Affidavit along with its Exhibits (filed contemporaneously herewith) to be posted on the NFOA Liquidation's website and the Receivership Management, Inc.'s ("RMI") website ([www.receivermgmt.com](http://www.receivermgmt.com)). The Special Deputy Liquidator will also mail letters explaining the distribution to the Class 2 claimants along with the 2014 final distribution checks.<sup>8</sup>

29. This Motion seeks relief that will be relied upon in making the final distribution to approved Class 2 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 Liquidator respectfully requests that the Court enter an order granting this Motion and:

1. Authorizing the Liquidator, pursuant to Tenn. Code Ann. § 56-9-332, to make a final distribution of approximately \$104,000.00 pro rata to the approved Class 2 claimants (which is approximately an additional 0.53% pro rata final distribution) as set forth in Exhibit 2 to the Affidavit of Special Deputy Liquidator Jeanne Barnes Bryant (filed contemporaneously herewith);

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<sup>8</sup> The NFOA Liquidation's website will not be renewed after it expires on July 31, 2014, and will re-route viewers during this limited time to the RMI website ([www.receivermgmt.com](http://www.receivermgmt.com)) for future information and inquiries.

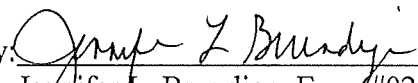
2. Approving, pursuant to Tenn. Code Ann. § 56-9-319 and the Court's October 19, 2010 Order Approving Final Distribution to Class 2 Claimants, the offset of the 2014 final distribution on the Thomas S. Baconrind Class 2 claim in the amount of \$261.16 against remaining commissions owed by Mr. Baconrind as an agent to NFOA;
3. Authorizing the Liquidator to issue the 2014 final distribution to the heirs of deceased Class 2 claimant Willie Boulton Clark (i.e., Reverend Richard Clark and Pamela Sue Wheeler) in equal shares pursuant to the Court's October 19, 2010 Order Approving Motion for Direction for Making Final Distribution on Class 2 Claim of Deceased Claimant Willie Boulton Clark;
4. Authorizing the Liquidator to issue the 2014 final distribution to the heirs of deceased Class 2 claimant Gladys Sabin, pursuant to the Court's December 20, 2011 Order Approving Motion for Direction for Making Distributions on Class 2 Claim of Deceased Claimant Gladys Sabin, as follows: one-half (1/2) to the Reverend Norman A. Sabin, one-fourth (1/4) to Martha U. Rennau, and one-fourth (1/4) to Charles W. Postma;
5. Authorizing the Liquidator to make distributions as directed in any Affidavit of Heirship that is presented to the Liquidation and discharging the Liquidator, her Special Deputy Liquidator, and their agents from any and all liability associated with any distribution made pursuant to an Affidavit of Heirship;
6. Authorizing the Liquidator to reserve approximately \$46,618.74 to pay the final administrative costs necessary to close the Liquidation;

7. Approving, pursuant to Tenn. Code Ann. § 56-9-310(a)(4), the Liquidator's payment of all Class 1 administrative fees and expenses for the Special Deputy Liquidator, outside legal counsel, and third party contractors to perform the final distribution and closure activities set forth in this Motion that the Liquidator determines to be reasonable and payable after the proper administrative review, and requiring no additional fee motions to be filed with the Court;
8. Ordering the Liquidator to pay all remaining court costs in this case;
9. Authorizing, after the payment of the final distribution and all Class 1 administrative expenses and fees, the transfer, pursuant 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);
10. 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 pursuant to Tenn. Code Ann. § 56-9-333(a);
11. Authorizing the Liquidator, pursuant 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 Liquidator filing notice with the Court that all closure activities have been completed;

12. Ordering, upon completion of the closure activities set forth in this Motion, the Liquidator to file Notice and Final Order of Discharge with the Court that will terminate the NFOA receivership and discharge the Liquidator, along with her staff and current and prior statutory receivers and special deputy receivers, finally and fully from all duties as the Liquidator of the NFOA receivership pursuant to Tenn. Code Ann. § 56-9-334(a); and
13. 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:   
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**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 parties and interested entities listed below on this the 27<sup>th</sup> day of June, 2014.

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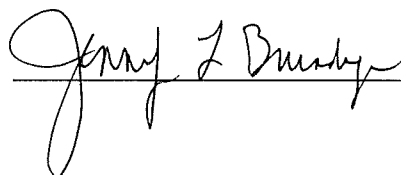
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