

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

MARY TAYLOR, Ohio Superintendent of Insurance, in her capacity as Liquidator of LMI Insurance Company,	:	
	:	
	:	Case No. 00-CV-002431
	:	
Plaintiff,	:	
	:	Judge Charles A. Schneider
v.	:	
	:	
LMI Insurance Company,	:	
	:	
Defendant.	:	

REPORT ON STATUS OF LIQUIDATION

I. INTRODUCTION

This Report is filed to inform the Court and claimants in the LMI Insurance Company (“LMI”) liquidation of the status of the case, and the Liquidator’s progress on the liquidation proceeding since the last status report filed on October 31, 2011. The 2011 Report on Status of Liquidation is attached and incorporated herein as Exhibit A.

As reported in the 2011 Report, the Liquidator obtained court approval of an Absolute Final Bar Date of June 30, 2009, which was not a modification or extension of the May 23, 2001 Bar Date in the LMI case, but rather was a new date that represents the date after which the Liquidator will not receive any new or previously unspecified claims (including Class 7 claims). The Liquidator continues to receive notices of new claims after the Bar Date and Absolute Final Bar Date, which include primarily notices of asbestos lawsuits¹, notices of construction defect lawsuits and notices of lead paint exposure.

¹ The asbestos lawsuits each name hundreds of defendants, one of which is a manufacturer or employer that was insured under expired LMI policies dating as far back as the 1970s.

As previously reported, the Absolute Final Bar Date establishment allows the Liquidator to quantify, by class, all claims made against the assets of the LMI liquidation estate. It also allows the Liquidator to determine the validity and value of all the proofs of claim filed in the LMI liquidation and thus the estate's overall claims liability in relation to its assets so that ultimately a final distribution to creditors may be made in accordance with the Ohio Insurance Liquidation Statutes and the estate closed.

II. CLAIMS

A. Status of LMI Policyholder Claims Administered By Insurance Guaranty Funds

Prior to liquidation, LMI wrote over a dozen different lines of business throughout the United States, including long-tail liability workers' compensation, environmental, and commercial multiple peril insurance. Since the filing of the 2011 Report (in October of 2011), twenty-two (22) insurance guaranty associations ("IGAs") have had activity administering, processing and/or paying LMI's covered Class 2 (policyholder) claims. LMI's claim files remain at the IGAs while they are paying the claims or disputing LMI's and their own coverage of the claims. After an IGA has completed its handling of a claim file, the IGA returns it to the Liquidator for further adjudication. When there is no statutory limit or cap on the IGA's payment obligation, the claim file is returned to the Liquidator when the claim is concluded.

While the IGAs have resolved the vast majority of the thousands of LMI policyholder claims, as of the time of this Report, there are still fifty-three (53) open claim files involving eleven (11) IGAs as of July 29, 2013.² That number continues to shrink as files are returned to the Liquidator.

² The IGAs with open claims as of July 29, 2013 are: California, Delaware, Florida Workers Compensation Security Fund, Georgia, Maryland, New Jersey, New Jersey Workers' Compensation Security Fund, New York, Pennsylvania, Pennsylvania Workers Compensation Security Fund and Virginia

B. Status of Proofs of Claims Administered by the Liquidator

Since the 2011 Report, the Liquidator's Claims Department records show that the Liquidator received 6,076 proofs of claim³ from various classes of claimants as of the Absolute Final Bar Date. As of the date of this Report, the Liquidator has adjudicated (or determined) 6,035 of the proofs of claims filed pursuant to R.C. 3903.35, et seq.

Among the undetermined proofs of claim are the individual proofs of claims filed by the IGAs, twenty-two (22) of which have paid or are paying covered policyholder claims. In this case, as in others where there is guaranty fund protection, the proofs of claim filed by the IGAs are the largest claims against the estate. IGAs expend monies to pay policyholder claims long before resolution of the ultimate financial condition of the liquidating insurer's estate. In turn, IGAs are granted Class 1 and Class 2 priority claim status in the liquidation estate. See R.C. 3903.42. Class 1 claims include the IGAs' reasonable expenses in handling claims. See R.C. 3903.42(A). The IGAs' Class 2 claims include all insured loss claims paid by the IGAs (loss payments and paid allocated LAE). See R.C. 3903.42(B).

Together, as of March 31, 2013, the 22 participating IGAs alone have submitted claims against the LMI estate in excess of \$51.4 million, which sum includes Class 1 claims totaling approximately \$6.2 million and Class 2 claims totaling approximately \$45.2 million. The Liquidator continues to review the IGAs' proofs of claim, which includes confirming the claims and expenditures of the 22 IGAs handling the claims after LMI's liquidation.

³ The 2011 Report stated that there were 6,073 proofs of claim filed in the LMI liquidation estate. Due to the data verification that occurs during the claims adjudication process, the Claims Department reports that the total proofs of claim filed is in fact 6,076.

C. Third Early Access Distribution and First Interim Distribution to Non-IGA Policyholder Claimants

The Liquidator made a Third Early Access Distribution to the IGAs in November, 2011. Accordingly, to date the IGAs have received a total of \$5,873,246.18 in Early Access on their Class 1 claims, and a total of \$18,216,631.00 in Early Access on their Class 2 claims, consisting of \$12,058,580.24 in cash payments from the LMI estate and \$12,031,296.94 in special deposit offsets, in accordance with R.C. 3903.34 and the court-approved Early Access Plan.

The Liquidator also adjudicated Class 2 claims filed by claimants whose policyholder level claims are not covered in whole or in part by IGAs. In addition to the Class 2 liability to IGAs, the LMI estate has \$663,690.58 in allowed class 2 claims that are not filed or covered by IGAs. The first interim cash payment distribution amounted \$159,285.74. There has been no adjustment in the proof of claim filing deadline (the Bar Date) or the Absolute Final Bar Date in the LMI liquidation proceeding. Thus, no one can file claims after June 30, 2009, and any such claim forms are returned to sender. All claims filed after the May 23, 2001 Bar Date are late-filed, Class 7 claims that are unlikely to receive any distribution. See R.C. 3903.42.

III. ASSET RECOVERY

Although the Liquidator has collected the vast majority of assets as reflected in the Liquidator's periodic accountings filed with this Court, the Liquidator has not completed asset recovery. The Liquidator continues to pursue reinsurance recoveries, which must be completed before any final distribution of assets to claimants in the LMI liquidation may occur. The largest assets collected to date include \$14,638,689.90 in reinsurance recoveries, \$5,146,137.38 in interest income earned on conservative investments of LMI's funds and \$3,527,192.84 in salvage and subrogation.

IV. CLOSING THE ESTATE

As reported in the 2011 Report, the liquidation process often takes fifteen years or more when the liabilities include long tail claims and when there is significant asset recovery litigation. The Liquidator cannot precisely determine the estate's exact claims liability or the corresponding distribution percentage until all remaining claims and other active matters in the LMI liquidation are finally resolved. The Liquidator has made much progress towards the closure of the LMI liquidation estate.

The Liquidator also makes an effort to try to provide claimants with good faith estimates of the time in which the Liquidator hopes to close a mature estate and make a final distribution to claimants other than IGAs and, when possible, a preliminary distribution percentage estimate based on current projections of assets and liabilities. This newer practice of posting good faith estimates in mature estates when appropriate is part of this Liquidator's commitment to the creditors of the estates we manage. This information is provided because it might be useful to consumers or lead to more informed consumer decisions, such as, for example, in the event consumers are approached by claims buyers. In all circumstances, however, all persons receiving this information must be aware that the good faith estimates are estimates, and that they are based upon information and circumstances known at the precise time they were made, which is subject to change. The underlying facts and circumstances upon which the good faith estimates are based are subject to change. Therefore, the good faith estimates and the actual distribution percentages that will be made years from now, are subject to change.

As of and effective July 29, 2013, the Liquidator presently estimates in good faith that she will pay 100% of allowed claims in Class 1 and that based on information currently available, she will pay a pro-rata amount of allowed Class 2 claims. At this particular time, the Liquidator

does not expect to make any distributions to claimants in Classes 3 through 9. These good faith estimates are expected to change prior to the actual distributions and closing of the LMI estate. The actual pro-rata distributions will be reflected in the Liquidator's Motion for Order Approving Final Report of Claims to be filed at or near the time of the final distribution of LMI assets. The Liquidator further estimates in good faith that this Estate will remain open until approximately 2015, and that a final distribution to Class 2 claimants will occur in or after 2015. Interested persons may check the Liquidator's website www.ohliq.com → Insurance Companies → Open → LMI Insurance Company → Public Documents to see key documents and monitor this liquidation case.

Respectfully submitted,

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her capacity as Liquidator of LMI Insurance Company

CERTIFICATE OF NOTICE

I hereby certify that a true and accurate copy of the foregoing Report on Status of Liquidation was posted on the Liquidator's website (www.ohliq.com) under Open Liquidations - LMI Insurance Company substantially contemporaneous with the filing of this Report.

/s/ Scott R. Mergenthaler
Scott R. Mergenthaler (0012869)

Liquidator attempting to assert either as late filed contingent claims or as new contingent claims that relate back to a timely-filed "blanket" proof of claim form. As in other cases where certain claimants file "blanket" proofs of claim and it is certain that assets will be insufficient to pay even Class 2 policyholder claimants in full, the Liquidator in this case obtained court approval of an Absolute Final Bar Date of June 30, 2009. An Absolute Final Bar Date is, by its terms, not a modification or extension of the Bar Date. Rather, the Absolute Final Bar Date is a new date that represents the date after which the Liquidator will not receive any new or previously unspecified claims (including Class 7 claims).

The establishment of the Absolute Final Bar Date allows the Liquidator to quantify, by class, all claims made against the assets of the LMI liquidation estate. Only then can the Liquidator determine the validity and value of the totality of the proofs of claims and the estate's overall claims liability in relation to its assets so that ultimately distributions to creditors can be made in accordance with the Ohio Insurance Liquidation Statutes and the estate closed. Without the Absolute Final Bar Date cutting off claims, this estate will remain open *ad infinitum*. During that time few additional new assets will be recovered because they have, with the few exceptions noted below, already been recovered during the ten years of this liquidation. The amount of future income that could be earned on the Liquidator's conservative investments of the estate's assets if the estate is kept open longer than planned is speculative, but in recent years the income from investments has been near zero. In contrast, liabilities will increase. The costs of administration will continue and the overall claims liability will increase, thus substantially diminishing the possibility of a meaningful distribution to Class 2 creditors.

II. CLAIMS

A. Status of LMI Policyholder Claims Administered By Insurance Guaranty Funds

Prior to liquidation, LMI wrote over a dozen different lines of business throughout the United States, including long-tail liability workers' compensation, environmental, and commercial multiple peril insurance. As a result, LMI's liquidation proceeding has actively involved twenty-eight (28) separate insurance guaranty associations ("IGAs") throughout the United States, each of which became statutorily obligated upon liquidation to administer, process and pay LMI's Class 2 (policyholder) claims up to each IGA's applicable statutory limits.¹ In nearly all states, the minimum guaranty association limit is \$300,000 per policyholder, with some states having higher limits. However, there are generally no statutory caps and policy limits whatsoever on workers' compensation claims.

As a result, LMI's liquidation process is extended and complicated by numerous long tail workers' compensation, liability and litigated environmental claims that necessarily remain at the IGAs that are either paying the claims, or are disputing LMI's and their own coverage of the claims. As of the time of this Report, not all IGAs had finished paying all policyholder claims because of the long tail nature of LMI's policyholder claims liabilities and the uncertainty of the claims liability. However, 17 of the 28 state IGAs have finished their work in this estate. Only a total of 78 combined claims remain to be serviced by the 11 IGAs that still have open claims.²

¹ The Guaranty Associations that filed proof of claims in the LMI liquidation are: Alabama, Arizona IGA, California, Colorado, Connecticut, Delaware, District of Columbia, Florida IGA, Florida WC, Georgia, Illinois, Iowa, Kansas, Kentucky, Maryland, Michigan, Missouri, New Jersey IGA, New Jersey WC, New York, North Carolina, Ohio, Oklahoma, Pennsylvania IGA, Pennsylvania WC, South Carolina, Virginia, Washington and West Virginia.

² The IGAs with open claims as of September 30, 2011 are: California, Delaware, Florida Workers Compensation Security Fund, Georgia, Maryland, New Jersey, New Jersey Workers' Compensation Security Fund, New York, Pennsylvania, Pennsylvania Workers Compensation Security Fund and Virginia.

At the point in time when the IGA has paid up to its applicable cap on a LMI policyholder claim, the IGA returns the claim to the Liquidator for further adjudication. When there is no cap, the claim is returned when the claim is concluded. While the IGAs have resolved the vast majority of the thousands of LMI policyholder claims, the Liquidation Office Claims Department advises that there are 78 open claim files at IGAs as of October 20, 2011 (as compared to 149 open claim files on May 31, 2011). Of those 78 open claims, 51 are workers' compensation claims for which the IGA could have long term liability to the policyholder due to the unlimited cap on claims. Even so, the number of total open files at IGAs is continually shrinking as files are returned from the IGA to the Liquidator on a rolling basis. To date, the IGAs have reported that they have collectively paid more than \$43.6 million in policyholder claims as of September 30, 2011.

B. Status of Proofs of Claims Administered by the Liquidator

The Liquidator obtained court approval of an Absolute Final Bar Date of June 30, 2009. The establishment of this date allows the Liquidator to quantify, by class, all claims made against the assets of the estate, determine the validity and the value of all such claims so that ultimately a distribution may be made in accordance with the Ohio Insurance Liquidation Statutes. There has been no adjustment in the proof of claim filing deadline ("Bar Date") or the Absolute Final Bar Date in the LMI liquidation proceeding. As a result no one can file claims after June 30, 2009 (all claim forms will be returned to sender) and all claims filed after the May 23, 2001 Bar Date are late filed, Class 7 claims that are unlikely to receive any distribution. See R.C. 3903.42.

In total, The Liquidator's Claims Department records show that the Liquidator received 6,073 proofs of claims from various classes of claimants as of the Absolute Final Bar Date. As of

October 28, 2011, the Liquidator has finally determined 5937 of the 6,073 total proofs of claims pursuant to Ohio R.C. 3903.35, *et seq.*

Among the undetermined proofs of claim are the individual proofs of claims filed by the 11 IGAs that still have and are paying open claims. *See* footnote 2, *supra*. In this case, as in others where there is guaranty fund protection, the proofs of claim filed on behalf of the IGAs are the largest claims against the estate. *See* footnote, 1, *supra*. IGAs expend monies to pay policyholder claims long before resolution of the ultimate financial condition of the liquidating insurer's estate. In turn, IGAs are granted Class 1 and Class 2 priority claim status in the liquidation estate. *See* R.C. 3903.42. Class 1 claims include the IGAs' reasonable expenses in handling claims. *See* R.C. 3903.42(A). The IGAs' Class 2 claims include all insured loss claims paid by the IGAs. *See* R.C. 3903.42(B).

Together, all of the participating IGAs have submitted proofs of claims against the LMI estate in excess of \$49.4 million as of September 30, 2011, which sum includes Class 1 claims totaling approximately \$5.8 million and, as referenced above, Class 2 claims (loss payments and paid allocated LAE) totaling approximately \$43.6 million. These amounts will increase as reporting of payments continues. The Liquidator filed a Motion on October 31, 2011 requesting approval to make third early access payments to IGAs on their Class 1 and Class 2 claims.

The Liquidator also adjudicated Class 2 claims filed by claimants whose policyholder level claims are not covered in whole or in part by insurance guaranty associations. In addition to the Class 2 liability to IGAs, the LMI estate has \$663,690.58 in allowed class 2 claims that are not filed or covered by IGAs ("non-IGA claims"). The Liquidator's above referenced October 31, 2011 Motion also requests approval to make an interim 24% pro rata distribution to claimants with allowed Class 2 claims that are not covered by an IGA.

III. ASSET RECOVERY

Although the Liquidator has collected the vast majority of assets as reflected in the Liquidator's periodic accountings filed with this Court, the Liquidator has not completed asset recovery. The largest assets collected to date include \$14,276,041.42 in reinsurance recoveries, \$4,989,736.88 in interest income earned on conservative investments of LMI's funds and \$3,493,192.81 in salvage and subrogation.

IV. CLOSING THE ESTATE

The liquidation process often takes 15 years when the liabilities include long tail claims and when there is significant litigation. Although the Liquidator cannot precisely determine the Estate's exact claims liability and corresponding exact distribution percentage until all remaining claims and other active matters in the liquidation are finally resolved years from now, the Liquidator is making an effort to try to provide claimants with good faith estimates of the time in which the Liquidator hopes to close a mature estate and make a final distribution to claimants other than IGAs and, when possible, a preliminary distribution percentage estimate based on current projections of assets and liabilities. This new practice of posting good faith estimates in mature estates when appropriate is part of this Liquidator's commitment to the creditors of the estates we manage. This information is provided because it might be useful to consumers or lead to more informed consumer decisions, such as for example, in the event consumers are approached by claims buyers. In all circumstances, however, all persons receiving this information must be aware that the good faith estimates are estimates, and that they are based upon information and the circumstances known at the precise time they were made which is subject to change. The underlying facts and circumstances upon which the good faith estimates

are based, and therefore the good faith estimates and the actual distribution percentages that will be made years from now, are subject to change.

As of and effective October 25, 2011, the Liquidator *presently estimates* in good faith that she will pay 100% of allowed claims in Class 1 and that, based on information currently available, she will pay a pro-rata amount of allowed Class 2 claims that is in excess of 24%. At this particular time, the Liquidator does not expect to make any distributions to claimants in classes 3 through 9. These good faith estimates *are expected to change* prior to the actual distributions and closing of the LMI estate. The Liquidator hopes to present a more precise good faith estimate at the end of 2012. Even then, the actual pro-rata distributions will be reflected in the Liquidator's Motion for Order Approving Final Reports of Claims to be filed at or near the time of the distributions of assets of the LMI. While the Liquidator has begun to make interim distributions, the Liquidator further estimates in good faith that this Estate will remain open until approximately 2015 and that the final distribution to Class 2 claimants will occur in or after 2015. Interested persons may check the Liquidator's website www.ohliq.com -> Open Liquidations -> LMI Insurance Co.-> Documents to see key documents and monitor the liquidation case.

Respectfully submitted,

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