

FILED
DATE: July 18, 2023
TIME: 07/18/2023 7:36:27 AM
WAKE COUNTY
SUPERIOR COURT JUDGES OFFICE
BY: SS

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

WAKE COUNTY

FILE NO. 19 CVS 8664

MIKE CAUSEY,
COMMISSIONER OF INSURANCE
OF NORTH CAROLINA,

Petitioner,

v.

SOUTHLAND NATIONAL
INSURANCE CORPORATION,
SOUTHLAND NATIONAL
REINSURANCE CORPORATION,
BANKERS LIFE INSURANCE
COMPANY, COLORADO BANKERS
LIFE INSURANCE COMPANY,
North Carolina Domiciled
Insurance Companies,

Defendants.

ORDER MODIFYING
MORATORIUM ORDER AND
INSTRUCTION ON POLICY
SURRENDERS

THIS MATTER is before the undersigned on the motion of Mike Causey, Commissioner of Insurance of the State of North Carolina, as Rehabilitator (“Rehabilitator”) of Colorado Bankers Life Insurance Company (“CBL”), moving the Court, pursuant to N.C. Gen. Stat. § 58-30-85(b) and (c) and other applicable provisions of law, to modify the Court’s June 27, 2019 Order Granting Motion For Moratorium On Policyholder Surrenders and Other Relief (“Moratorium Order”), and instruct the Rehabilitator to surrender all annuity contracts and riders issued by Colorado Bankers Life Insurance Company (“CBL”) and Bankers Life Insurance Company (“BLIC”) (collectively “Respondents”), that would have a contract value of \$1,000 or less after a 25% partial withdrawal as contemplated in the Motion for Instructions Concerning

Partial Distribution of Funds to Policyholders filed on April 28, 2023 (“Partial Withdrawal Motion”) or after other payments allowed in rehabilitation¹ (a “Small Contract” or the “Small Contracts”).

A hearing on this Motion was conducted on June 19, 2023. Having considered the Rehabilitator’s motion, the relevant portions of the record, the applicable law, and the argument of counsel the Court hereby finds as follows:

1. The Rehabilitator seeks to modify the Court’s June 27, 2019 Order Granting Motion For Moratorium On Policyholder Surrenders and Other Relief (the “Moratorium Order”).

2. The Rehabilitator filed on April 28, 2023 his Partial Withdrawal Motion, seeking approval to make a one-time pro rata distribution in the amount of 25% to annuity policyholders of CBL who have a current claim for annuity proceeds as of the date of the proposed distribution.²

3. Prior to being placed into rehabilitation, CBL and BLIC offered certain annuity contracts and riders (collectively, the “Contracts” or individually, a “Contract”).

4. The Contracts were written on several forms. Most Contracts are stand-alone contracts and some Contracts are riders to certain life insurance policies.

5. The corpus earns interest at a fixed interest rate for a guaranteed period of time, which can be adjusted thereafter, but which was guaranteed to be a minimum of 1.00%.

6. The Contracts provide that the Contract owner may surrender the Contract for its full surrender value or make a withdrawal of less than the surrender value, until the earlier of (a)

¹ Certain future payments, such as required minimum distributions on IRAs or financial hardship payments, could also reduce annuities to \$1000 or less in account value (“Exception Payments”).

² The Rehabilitator contemplates a similar partial withdrawal for BLIC, based on a further motion to be filed.

the maturity date; (b) the death of the owner; or (c) the death of the annuitant (if the owner is not a natural person).

7. Surrenders within certain years were subject to surrender charges. Typically, the surrender charges would decrease each year. After the number of years set forth in the Contract passed, there would be no surrender charge. A full surrender terminates the Contract.

8. The Moratorium Order, *inter alia*, imposed a moratorium on loans, annuitizations and cash surrender rights under policies of Respondents, and ordered that the Rehabilitator adopt and implement a policy to provide substitute benefits in lieu of the contractual obligations of the Respondents for policyholders who petition for payment under claims of legitimate hardship.

9. The Rehabilitator has determined that the Small Contracts are operating at a loss due to the high amount of non-performing affiliated assets and the cost to administer the policies. This results in an overall loss of funds to all policyholders. It is therefore in the interest of all policyholders that the Small Contracts be cashed out, in order to stop the further erosion of assets during rehabilitation. Forcing the surrender of these CBL and BLIC Small Contracts will eliminate considerable administrative expense and erosion of assets to the receivership estates of CBL and BLIC and benefit all policyholders.

10. Given the need to cash out the Small Contracts, and the 25% distribution contemplated in the Partial Withdrawal Motion, the Rehabilitator seeks an order of this Court modifying the Moratorium Order and instructing the Rehabilitator to force the surrender of each Contract that would have an account value of \$1,000 or less after a 25% partial withdrawal or Exception Payment, by distributing the account value less applicable tax withholding, fees and surrender charges to the Small Contract owner. This would include current annuity account values of \$1334.00 or less, and certain future annuity account values of \$1000 or less.

11. This distribution would afford the Small Contract holders the benefit of the 25% partial withdrawal in conjunction with being cashed out. It would also prevent the situation where the 25% partial withdrawal reduced some annuities \$1000 or less in account value and a second extensive round of cash outs would be needed. It would also allow for some future cash outs as Small Contracts drop below \$1000 in account value due to Exception Payments, subsequent to the partial withdrawal.

12. CBL has 4,718 Small Contracts in force, which have an account value of \$1,334 or less. These CBL Contracts have a total value of approximately \$3,740,000.

13. BLIC has nine Small Contracts in force, which have an account value of \$1,334 or less. These BLIC Small Contracts have a total value of approximately \$5,200.

14. The Rehabilitator has determined that CBL and BLIC have sufficient funds available to fund the surrenders that would result from this proposed exception to the moratorium.

15. The Rehabilitator therefore requested that the Court modify the Moratorium Order and instruct the Rehabilitator to force the surrender of CBL and BLIC Small Contracts with a current Contract value of \$1,334 or less, and Small Contracts that drop below \$1000 in account value due to future Exception Payments, less applicable tax withholding, fees and surrender charges.

16. The Rehabilitator shall notify the CBL and BLIC Small Contract owners with current Contract values of \$1,334 or less by sending a letter to each Contract owner. The letter will provide the owner's Small Contract value and will explain that the Small Contract will automatically be surrendered. A copy of the CBL letter, substantially in the form that will be sent to these Small Contract owners, is attached to the Rehabilitator's motion as Exhibit A. A

copy of the CBL letter, substantially in the form that will be sent to Small Contract owners with annuities that drop below \$1000 in account value due to future Exception Payments, is attached to the Rehabilitator's motion as Exhibit B. The BLIC letters will be identical in form to Exhibits A and B except for company name.

17. In light of the administrative benefit and savings to the rehabilitation estates, all policyholders will benefit from the Rehabilitator's proposal. Consequently, these payments are not a preferential payment.

18. The Rehabilitator's proposal is fair and equitable, and will not cause undue or material harm to other policyholders or creditors of CBL or BLIC, or to the general public.

Based on the foregoing findings, the Court concludes that the Rehabilitator's Motion to Modify should be granted for good cause shown and in the Court's discretion.

NOW THEREFORE, pursuant to N.C. Gen. Stat. § 58-30-85(b) and (c) and other applicable provision of law, it is ORDERED as follows:

1. That the Rehabilitator's Motion to Modify the Court's June 27, 2019 Order Granting Motion For Moratorium On Policyholder Surrenders and Other Relief is ALLOWED and the Moratorium Order is modified and the Rehabilitator is instructed to surrender all CBL and BLIC Small Contracts with a current Contract value of \$1,334 or less, and Small Contracts that drop below \$1000 in account value due to future Exception Payments, less applicable tax withholding, fees and surrender charges; and

2. That the letters attached as Exhibits A and B to the Motion are approved, and the Rehabilitator shall notify the Contract owners by sending letters in the substantial form of the letter attached as Exhibits A and B to the Motion, to each Contract owner; and

3. That the Moratorium Order otherwise remains in full force and effect.

SO ORDERED this 16th day of July, 2023.

A handwritten signature in black ink, appearing to read 'A. Shirley', written over a horizontal line.

The Honorable A. Graham Shirley, II
Superior Court Judge Presiding

7/16/2023 4:45:36 PM