

NORTH CAROLINA BY: S. Smallwood IN THE GENERAL COURT OF JUSTICE
WAKE COUNTY SUPERIOR COURT DIVISION
19 CVS 008664-910

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,)
)
Respondents.)

**ORDER GRANTING JOINT
MOTION FOR MORATORIUM ON
UNCOVERED POLICY
OBLIGATIONS DURING
LIQUIDATION AND TO
ESTABLISH A METHOD OF
FIXING CLASS TWO CLAIMS**

This matter came before the undersigned for hearing on November 18, 2024 on the Petitioner Mike Causey, Commissioner of Insurance of North Carolina (“Petitioner”), and Respondents Bankers Life Insurance Company (“BLIC”) and Colorado Bankers Life Insurance Company’s (“CBL”, together with BLIC, “Respondents”) joint motion for an order pursuant to N.C. Gen. Stat. § 58-30-120(b) to impose a moratorium on cash surrenders, transfers, annuitizations, interest payments, maturity payments, death benefits, required minimum distributions on IRAs, financial hardship payments, health claims, policy loans, and any other payments or satisfaction of policy obligations of Respondents not covered by state life

and health guaranty associations during Liquidation of the companies (the “Motion for Liquidation Moratorium”). The motion also seeks approval of a method to fix class two claims during liquidation. Having considered the Motion for Liquidation Moratorium, the arguments of counsel, and the record in this matter, the Court finds and concludes as follows:

1. On June 27, 2019, this Court ordered BLIC and CBL into rehabilitation, with the companies’ consent, pursuant to Article 30 of Chapter 58 of the North Carolina General Statutes. Petitioner was appointed as Rehabilitator of BLIC and CBL.

2. Also on June 27, 2019, this Court entered the Order Granting Motion for Moratorium on Policy Surrenders and Other Relief (“Rehabilitation Moratorium”). That order imposed a moratorium on cash surrenders, annuitizations, and policy loans against the policies issued by BLIC, CBL and their sister insurance company Southland National Insurance Corporation, until otherwise ordered by this Court.

3. The Court entered the Rehabilitation Moratorium due to Respondents’ financial condition at the time of entering rehabilitation. In light of the shortfall of assets relative to policyholder liabilities, if policyholders had been allowed to surrender their policies for cash in the ordinary course of business during rehabilitation, the first policyholders would be paid but there would not be enough cash to pay later policyholders.

4. The Rehabilitation Moratorium has remained in place since June 27, 2019. However, there have been some ongoing general exceptions. In addition to

those ongoing general exceptions, this Court has approved certain partial distributions to policyholders as a percentage of their annuities, as specific one-time exceptions to the Rehabilitation Moratorium.

5. On December 30, 2022, this Court entered the Order of Liquidation Against Bankers Life Insurance Company and Colorado Bankers Life Insurance Company and Other for Injunctive Relief (“Liquidation Order”). The Court found BLIC and CBL insolvent and ordered the companies into Liquidation. Pursuant to the terms of the Liquidation Order, it will be effective on November 30, 2024. Petitioner is appointed Liquidator of BLIC and CBL in the Liquidation Order.

6. Pursuant to N.C. Gen. Stat. § 58-30-120(b), the Liquidator may take such action “as may be necessary or appropriate for the accomplishment of or in aid of the purpose of liquidation.”

Moratorium During Liquidation

7. The Court’s Liquidation Order with a declaration of insolvency triggers coverage from the Guaranty Associations¹ subject to and in accordance with their enabling acts, as of the effective date of the Liquidation Order. *See* N.C. Gen. Stat. §§ 58-30-110(c), 58-62-36(d). Many Guaranty Associations provide up to \$300,000 in protection for life insurance death benefits and \$250,000 for annuity benefits, and \$100,000 for life insurance policy net cash values, though some Guaranty

¹ The National Organization of Life and Health Guaranty Association (“NOLHGA”) represents the interests of its member state guaranty associations in this, and similar, proceedings.

Associations are authorized to provide more. *See* N.C. Gen Stat. § 58-62-21(d). When Guaranty Associations provide benefits to Respondents' policyholders' covered class two claims², the Guaranty Associations become subrogated to those class two claims against the insurance company for the amount paid to policyholders.

8. Policies issued in excess of Guaranty Association coverage limits will be covered by the Guaranty Associations only up to the statutory limits. Meaning the policyholders with annuities or other insurance policies above the maximum coverage amount ("Uncovered Obligations") will not receive full payment of those policy obligations from their state Guaranty Associations.

9. However, policyholders will have a prorata claim for the Uncovered Obligations, to the extent they have a valid class two claim under N.C. Gen. Stat. § 58-30-220 (2) up to policy limits ("Uncovered Claim"), against whatever assets BLIC and CBL can marshal in Liquidation or recover through litigation or other means, after all the Liquidator's expenses of administering the Liquidation are paid or properly reserved.

10. The distribution priority of Respondents' assets during Liquidation is set forth in N.C. Gen. Stat. § 58-30-220. Each priority class must be paid in full, or properly reserved, before funds can be paid to the next priority class. All distributions within each class must be pro rata so that all claimants in a class are treated equally.

² *See* N.C. Gen. Stat. § 58-30-220.

11. Policyholders' claims for policy benefits, including claims for Uncovered Obligations, subrogation claims of the Guaranty Associations for benefits provided to policyholders, and reasonable administrative expenses of Guaranty Associations, are all class two claims. *Id.* at (2). Any funds distributed on class two claims must be paid to all class two claimants on a prorata basis until obligations to that class are satisfied. N.C. Gen. Stat. § 58-30-220 ("No subcategories shall be established within the categories in a class.").

12. Due to their insolvency, Respondents do not have sufficient assets to make full payments on Uncovered Obligations. Differing partial payments to various policyholders on Uncovered Obligations cannot be reconciled with prorata treatment.

13. Due to these statutory requirements, it is appropriate to impose a moratorium on the cash surrender, transfer, annuitization, interest payments, maturity payments, death benefits, required minimum distributions on IRAs, financial hardship payments, health claims, policy loans and any other payments or satisfaction of all Respondents policyholders' Uncovered Obligations³ during Liquidation ("Liquidation Moratorium") until otherwise ordered by this Court.

Fixing Class Two Claims

14. Pursuant to N.C. Gen. Stat. § 58-30-105(b) and the Liquidation Order, all claims against Respondents, including claims by policyholders for amounts owed

³ For the avoidance of doubt, this moratorium applies only to claims by policyholders for funds owed in excess of the policyholder's state Guaranty Association coverage limits and is not a moratorium on Guaranty Association payments.

under a policy, are to be fixed as of the effective date of the Liquidation Order, November 30, 2024.

15. The inclusion of reasonable administrative expenses of Guaranty Associations in class two under N.C. Gen. Stat. § 58-30-220 presents a difficulty in fixing class two claims as of the liquidation effective date. While policy liabilities can be reasonably determined, and the covered and uncovered amounts can be calculated, the total future claims of Guaranty Associations for reasonable administrative expenses are not known at the inception of a liquidation. Therefore, Respondents cannot calculate a class two prorata distribution while future Guaranty Association expense claims remain a variable.

16. In an effort to ensure that all class two claimants, including policyholders with Uncovered Obligations, receive the same time value of assets, Respondents have identified two options to resolve this issue and seek the Court's approval of these options, in the alternative.

Establishing an Agreed Ceiling on Class Two Administrative Expenses

17. In an effort to be able to reasonably calculate prorata distributions to all class two claimants earlier in Liquidation, and ensure that all class two claimants are treated equally, Respondents, NOLHGA, and the Guaranty Associations are working to establish an agreed fixed administrative expense ceiling within which the Guaranty Associations could assert claims under N.C. Gen. Stat. § 58-30-220(2) (the "Fixed Ceiling") so that these expenses do not remain a variable and class two distributions can be made sooner in Liquidation.

18. In the event the Guaranty Associations choose to submit claims for reasonable administrative expenses that exceed the Fixed Ceiling, those amounts would be subordinated to the other class two claims (policyholders' Uncovered Obligations, the Guaranty Associations' subrogated claims, and the Fixed Ceiling claims) pursuant to the Guaranty Associations' prior consent.

19. As required by North Carolina statute, the Liquidator maintains the right and obligation to review all claims for the administrative expenses of the Guaranty Associations for reasonableness, even claims made within the Fixed Ceiling, and the right to deny any claims for any unreasonable expenses.

20. Establishing an agreed Fixed Ceiling as set forth herein would allow Respondents to reasonably calculate a fixed percentage share for each class two claimant and, therefore, seek exceptions to the Liquidation Moratorium much sooner in order to make prorata distributions to class two claimants. It would also allow class two claimants to receive the time value of assets of the Respondents on an equal basis through fixed percentage shares in assets available for class two.

21. Establishing a Fixed Ceiling is in the best interest of Respondents' policyholders.

Alternative Request to Allow Contract Interest Crediting on Uncovered Obligations

22. In the alternative, if the Fixed Ceiling concept is found to not be feasible by Respondents, NOLGHA, and the Guaranty Associations, the Motion requests this

Court approve crediting interest on Uncovered Obligations to annuity policyholders at the guaranteed contractual interest rate during Liquidation.

23. If the Fixed Ceiling is not established for Respondents' liquidation, class two claimants can share in the time value of assets only through interest crediting. The only equitable manner of interest crediting is at guaranteed contract rates. Pursuant to this Court's approval, the Liquidator intends to credit interest on the Uncovered Obligations at the guaranteed contract rates.

24. Therefore, for purposes of determining a policyholder's fixed claim in Liquidation as of the Liquidation effective date for Uncovered Obligations, and as an alternative to the Fixed Ceiling concept, Respondents request this Court's approval to fix annuity policyholders' Uncovered Claims as the account value as of the effective date of the Liquidation Order, plus the guaranteed contract interest crediting rate as of that effective date and going forward. Interest would only be credited to annuity accounts, not paid out to policyholders, so that the prorata calculation would not be affected negatively by differing payouts.

25. In the event that the Fixed Ceiling is not agreed upon, it is in the best interest of BLIC and CBL's policyholders to permit Respondents to determine annuity policyholders' Uncovered Obligations that are included as class two claims as set forth above.

It is therefore ORDERED, ADJUDGED, AND DECREED, that pursuant to N.C. Gen. Stat. § 58-30-120(b) and other applicable provisions of law, the Joint Motion

for Moratorium on Uncovered Policy Obligations During Liquidation and to Establish a Method of Fixing Class Two Claims is ALLOWED.

The Court further orders that the Liquidator impose a moratorium, effective November 30, 2024, on cash surrenders, transfers, annuitizations, interest payments, maturity payments, death benefits, required minimum distributions on IRAs, financial hardship payments, health claims, policy loans and any other payments or satisfaction of Respondents' Uncovered Obligations until such time as the Court approves lifting this moratorium or granting exceptions thereto.

The Court further orders and approves Respondents establishment of a Fixed Ceiling for Guaranty Associations' administrative expenses by agreement of Respondents, NOLHGA and the Guaranty Associations to be used to establish a fixed percentage share for all class two claimants for the purposes of determining prorata distributions shares and subordinating any reasonable Guaranty Association administrative expenses sought above the Fixed Ceiling as set forth herein.

In the event Respondents, NOLHGA, and the Guaranty Associations do not establish a Fixed Ceiling as set forth herein, and in the alternative, the Court hereby orders and approves Respondents fixing annuity policyholders' claims in Liquidation as the account value as of the effective date of the Liquidation Order, plus the guaranteed contract interest crediting rate as of that effective date and going forward for the purposes of setting an annuity policyholder's Uncovered Obligations in Liquidation.

SO ORDERED: 11/21/2024

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

A. Graham Shirley II
Superior Court Judge Presiding

11/21/2024 11:27:40 AM