

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

IN RE: Lincoln General Insurance Company :
In Liquidation : No. 1 LIN 2015

**APPLICATION TO APPROVE AGREEMENT
REGARDING THE DISPOSITION OF A SPECIAL DEPOSIT**

Applicant, Teresa D. Miller, Insurance Commissioner of the Commonwealth of Pennsylvania, in her official capacity as Statutory Liquidator (“Liquidator”) of Lincoln General Insurance Company (“Lincoln”), respectfully asks this Court, pursuant to the Insurance Department Act of 1921 (“Act”), 40 P.S. §§ 221.1 - 221.63, and Pa.R.A.P. 3776, to enter an Order in the form attached granting this Application and approving the terms of the Agreement attached to the Application as Exhibit A.

In support of this Application, the Liquidator avers the following:

1. Lincoln was placed in liquidation by Order of this Court dated November 5, 2015.
2. Prior to being placed in liquidation, Lincoln deposited monies with various state insurance departments as a condition precedent to being permitted to conduct business in those states. Those deposits are commonly referred to as “special deposits”.
3. The Liquidator is currently in the process of arranging for the disposition of Lincoln’s special deposits.
4. One of those special deposits is currently in the custody and control of the New Mexico Superintendent of Insurance (“NMSI”).

5. In order to distribute special deposit monies, state insurance departments typically must either seek judicial approval within their state to establish an ancillary receivership, or enter an agreement with the domiciliary liquidator regarding the disposition of the special deposit, subject to, in some instances, approval of the domiciliary liquidator's supervising Court.

6. The Liquidator has reached an agreement with the NMSI that will allow the New Mexico special deposit to be released to the Liquidator to be used to pay the claims of New Mexico claimants, should any arise, and any related administrative costs incurred by the NMSI, with the balance of the special deposit monies becoming general assets of the Lincoln estate.

7. The Liquidator's agreement with the NMSI is memorialized in the New Mexico Special Deposit Release Agreement ("Deposit Release Agreement"), which is attached to this Application as Exhibit A.

8. The Act confers broad power upon the Liquidator to administer the affairs of an insolvent insurer's estate and to achieve the purposes of the Act. See 40 P.S. §§ 221.1 and 221.23.

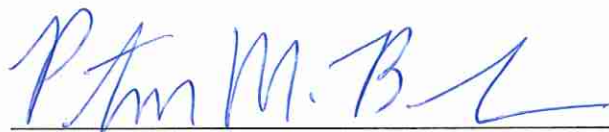
9. Section 221.23 further grants the Liquidator the authority to take such acts "as may be necessary or expedient for the accomplishment of or in aid of the purpose of liquidation." 40 P.S. § 221.23(23).

10. The Liquidator is not aware of any New Mexico claims, and believes that it is unlikely that any will materialize. Accordingly, there is a high probability that the New Mexico special deposit monies will be used in their entirety to increase the general assets available for distribution to Lincoln's policyholders. In the unlikely event that any New Mexico claims do materialize, the special deposit monies will be used to pay those claims, with any remaining balance becoming general assets of the Lincoln estate. If the special deposit monies are not sufficient to pay any New Mexico claims that might arise, the amount of those claims remaining

after receipt of the special deposit monies would be subject to the provisions of 40 P.S. § 221.61(b). In any event, the Liquidator believes entering the Deposit Release Agreement is in the best interests of the Lincoln estate and its policyholders, because it will avoid the expense associated with establishing and terminating an ancillary receivership in New Mexico.

WHEREFORE, the Liquidator respectfully requests that this Court grant her Application and enter an Order in the form attached approving the terms of the Deposit Release Agreement as set forth in Exhibit A, and authorizing the Liquidator to take such actions as are necessary to consummate the Deposit Release Agreement as approved.

Respectfully submitted,



PRESTON M. BUCKMAN (I.D. #57570)
Insurance Department Counsel
Office of Liquidations, Rehabilitations
& Special Funds
Governor's Office of General Counsel
Capital Associates Building
901 North 7th Street
Harrisburg, PA 17102
(717) 787-6009

Attorney for Teresa D. Miller, Insurance
Commissioner of the Commonwealth of
Pennsylvania, in her capacity as Statutory Liquidator
of Lincoln General Insurance Company In
Liquidation

Dated: _____

11/19/17

EXHIBIT A

NEW MEXICO SPECIAL DEPOSIT RELEASE AGREEMENT

THIS AGREEMENT is made as of November 17, 2017 by and between Hon. John G. Franchini, New Mexico Superintendent of Insurance ("Superintendent"), and Hon. Teresa D. Miller, Insurance Commissioner of the Commonwealth of Pennsylvania in her capacity as domiciliary Statutory Liquidator ("Liquidator") of Lincoln General Insurance Company, a Pennsylvania-domiciled property and casualty insurance corporation ("Insurer").

RECITALS

WHEREAS, Insurer is subject to delinquency proceedings in its state of domicile in a proceeding styled *IN RE: Lincoln General Insurance Company, in Liquidation* pending in the Commonwealth Court of Pennsylvania, No. 1 LIN 2015 (the "Receivership Proceeding"); and

WHEREAS, an Order of Liquidation was filed in the Receivership Proceeding on November 5, 2015, ordering Insurer's liquidation, and appointing the Liquidator and her successors in office as Statutory Liquidator (the "Receivership Order"); and

WHEREAS, the Receivership Order vests the Liquidator with title to Insurer's property, assets, contracts, and rights of action, and directs and empowers the Liquidator, among other things, to deal with Insurer's property and business, and generally to administer, manage and control Insurer, its property, assets and receivership estate generally; and

WHEREAS, Insurer made a special deposit in trust for the benefit of New Mexico policyholders and creditors pursuant to Section 59A-5-19 NMSA 1978 and other applicable New Mexico law; and said special deposit is currently being held in the form of cash proceeds from two matured securities (FNMA \$24,000 due 10/15/2015 and FHLMC \$301,000 due 8/25/2016) totaling \$325,000.00 (the "special deposit"); and

WHEREAS, the special deposit is held in trust in the custody of the Superintendent; and

WHEREAS, New Mexico has sufficient assets to justify establishment of an ancillary receivership if necessary, and to pay fees, wages, expenses and costs of the ancillary receivership's administration; and

WHEREAS, the New Mexico Property and Casualty Insurance Guaranty Association (the "Association") has confirmed that, to the best of its knowledge, it is not responsible for any claims against Insurer; and

WHEREAS, the Liquidator states that there are no known New Mexico claims, including the Association's, and that there are no other known New Mexico claims,

liabilities or creditors of Insurer of any priority class, or federal priority claims against any New Mexico obligor; and

WHEREAS, the Liquidator has provided the Superintendent all other requested materials, including proofs-of-claim for any known New Mexico claims of all priority classes, including claimant's return addresses, and other information, as applicable;

WHEREAS, in reliance on the Liquidator's and Association's information, the Superintendent has entered into this Agreement for the purposes of (1) releasing the special deposit proceeds to pay administrative expenses incurred in connection with release of the special deposit and this Agreement, including but not limited to bank fees, attorney's fees and expenses, as well as wire transfer and/or express courier charges, and (2) turning over the remaining balance thereof to the Liquidator; and

WHEREAS, the parties desire to avoid the expense of establishing an ancillary receivership in the state of New Mexico;

AGREEMENT

NOW, THEREFORE, in reliance upon and in consideration of the foregoing and the mutual terms, conditions, covenants and obligations of this Agreement, the parties agree as follows:

1. The Superintendent shall withdraw Insurer's special deposit from the depository bank, and shall pay/distribute the proceeds to satisfy in the following order of priority:

(a) any unpaid bank trust/custodial charges;

(b) the Superintendent's administrative expenses incurred in connection with release of the special deposit, including but not limited to attorney's fees and expenses, as well as wire transfer and/or express courier charges;

(c) a \$2000.00 trust deposit to be held for 60 days in the Superintendent's designated counsel's trust account to be applied to unpaid bills and expenses, with the unused balance to be refunded to the Liquidator;

(d) the Superintendent's other reasonable fees and expenses, whether like or unlike the foregoing; and

(e) the remaining balance to the Liquidator.

2. The remaining balance returned to the Liquidator shall remain subject to New Mexico claims as set forth in Section 3. The remaining balance need not be held in a segregated account.

3. The Liquidator agrees to pay any previously unpaid New Mexico claims of which the Superintendent notifies the Liquidator, and/or to refund to the Superintendent, amounts in the aggregate up to the full remaining balance returned to the Liquidator pursuant to Subsection 1(e), to fund/satisfy:

(a) amounts needed to administer, adjust, defend and/or pay unpaid New Mexico claims against Insurer and/or the Association, as estimated and demanded by the Superintendent in his sole discretion; and

(b) amounts needed to administer, defend and/or pay federal priority claims asserted in New Mexico against Insurer, the State of New Mexico and/or the Superintendent, or their employees, representatives, counsel or agents, as estimated and demanded by the Superintendent in his sole discretion.

4. Claim payment and refund obligations pursuant to Section 3 shall be on an absolute first-priority basis up to the full amount of the remaining balance returned to the Liquidator pursuant to this Agreement. It is specifically understood and agreed that the obligations set forth in Section 3 are not contingent upon or subject to any pro-rata allocations which may be made in connection with other non-New-Mexico receivership claims of the same or any other priority, nor are they contingent on the availability of sufficient funds to pay in full federal priority or other non-New-Mexico claims in the Receivership Proceeding, but rather constitute a first lien on the returned special deposit proceeds for the benefit of the Superintendent and New Mexico claimants. The provisions of Sections 2 through 4 shall remain in effect until the Liquidator files an application to make a final distribution of assets in the Receivership Proceeding, at which time those provisions become null and void.

5. The Recitals are contractual, and not mere recitals.

6. This written Agreement sets forth the entire agreement of the parties. All prior or contemporaneous agreements, written or oral, are merged herein. All agreements, written or oral, not set forth in this written Agreement are void, and of no force and effect.

7. This Agreement may be amended only in writing executed by all parties.

8. This Agreement may be executed in counterparts, each of which shall be considered an original if all signatures are original signatures, and all of which shall constitute one document.

9. This Agreement is binding on the parties' successors in office.

10. This Agreement may not be assigned.

11. This Agreement shall be construed in accordance with the substantive law

of New Mexico, disregarding choice-of-law principles.

12. Disputes arising in connection with this Agreement may be resolved in the District Court for Santa Fe County or any other court of competent jurisdiction, including the above-referenced Court in which the Receivership Proceeding is pending. The parties consent to the jurisdiction of the respective courts, and agree to accept service by certified mail, return receipt. In any such proceeding the prevailing party shall be awarded its attorney's fees, expenses and costs.

13. This Agreement shall not be binding or effective until it is approved by court order entered in the Receivership Proceeding.

LIQUIDATOR

Hon. Teresa D. Miller
Insurance Commissioner of the
Commonwealth of Pennsylvania
in her capacity as Statutory Liquidator of
Lincoln General Insurance Company

By: Kandi D. Buckman
Kandi D. Buckman
Chief Liquidation Officer

Date: 1/17, ~~2016~~ ²⁰¹⁷

SUPERINTENDENT

Hon. John G. Franchini
New Mexico Superintendent of Insurance

By: John G. Franchini
John G. Franchini

Date: January, ~~2016~~ ²⁰¹⁷

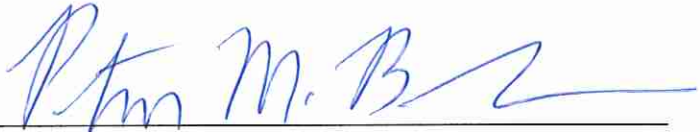
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CERTIFICATE OF SERVICE

I hereby certify that I am this day serving the foregoing document upon all parties of record in this proceeding in accordance with the requirements of 1 Pa. Code Chapter 33 in the following manner:

Service via regular U.S. Mail addressed as follows:

Jordan L. Miller, Esquire
jordanm@jdsalaw.com
Jeffers, Danielson, Sonn & Aylward, P.S.
2600 Chester Kimm Road
Wenatchee, WA 98801
(509) 662-3685
(509) 662-2452 (fax)



PRESTON M. BUCKMAN (I.D. #57570)
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Capital Associates Building
901 North 7th Street
Harrisburg, PA 17102
(717) 787-6009

Counsel for the Statutory Liquidator of Lincoln
General Insurance Company

DATED: _____

1/19/17

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

IN RE: Lincoln General Insurance Company :
In Liquidation :

No. 1 LIN 2015

ORDER

AND NOW, this _____ day of _____, 2017, upon consideration of the Liquidator's Application to Approve Agreement Regarding the Disposition of a Special Deposit, and any responses thereto, it is hereby ordered that the Application is GRANTED. Further, the terms of the New Mexico Special Deposit Release Agreement, as attached to the Application as Exhibit A, are approved, and the Liquidator is authorized to take such actions as are necessary to consummate the New Mexico Special Deposit Release Agreement as approved.

RENEE COHN JUBELIRER, JUDGE



COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE OF GENERAL COUNSEL

January 19, 2017

Michael F. Krimmel, Chief Clerk
Commonwealth Court of Pennsylvania
601 Commonwealth Avenue, Suite 2100
P.O. Box 69185
Harrisburg, PA 17120-9185

Re: *Lincoln General Insurance Company (In Liquidation)*
No. 1 LIN 2015

Dear Mr. Krimmel:

Attached please find an Application to Approve Agreement Regarding the Disposition of a Special Deposit with regard to the above-referenced liquidation.

Thank you for your assistance in this matter.

Very truly yours,

A handwritten signature in blue ink, appearing to read "P. M. Buckman".

Preston M. Buckman
Insurance Department Counsel

PMB:drh

Enclosure