

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In Re: Lincoln General Insurance Company :
in Liquidation : No. 1 LIN 2015

*IN RE: Liquidator's Application to Approve Agreement Regarding the
Disposition of a Special Deposit*

MEMORANDUM and ORDER

Presently before the Court is the Application of the Liquidator of Lincoln General Insurance Company (Lincoln) for Approval of an Agreement Regarding the Disposition of a Special Deposit (Application).¹ Specifically, the Application and underlying agreement relate to the disposition of monies Lincoln deposited with the New Mexico Superintendent of Insurance (Superintendent) in order to conduct its business in New Mexico. No responses or objections have been filed to the Application.

As the Liquidator notes in her Application, some jurisdictions, including New Mexico, require an out-of-state insurer to post a "special deposit" as a condition precedent to being permitted to conduct business in that state. Pursuant to Section 59A-5-19 of the New Mexico Insurance Code, Lincoln made such a special deposit of monies in trust for the benefit of its policyholders and creditors in that state prior to the Order of Liquidation. N.M.S.A. 1978, § 59A-5-19. According to the New Mexico Special Deposit Release Agreement (Agreement)

¹ Lincoln was placed into liquidation by Order dated November 5, 2015.

between the Liquidator and Superintendent, attached to the application as Exhibit A, the special deposit in the custody of the Superintendent totals \$325,000.

In her Application, the Liquidator avers as follows:

The Liquidator has reached an agreement with the [Superintendent] 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 [Superintendent], with the balance of the special deposit monies becoming general assets of the Lincoln estate.

....

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).^[2] In any event, the

² Pursuant to Section 561(b) of Article V of the Insurance Department Act of 1921 (Act), Act of May 17, 1921, P.L. 789, added by the Act of December 14, 1977, P.L. 280, 40 P.S. § 221.61(b):

The owners of special deposit claims against an insurer for which a liquidator is appointed in this or any other state shall be given priority against the special deposits in accordance with the statutes governing the creation and maintenance of the deposits. If there is a deficiency in any deposit, so that the claims secured by it are not fully discharged from it, the claimants may share in the general assets, but the sharing shall be deferred until general creditors, and also claimants against other special deposits who have received smaller percentages from their respective special deposits, have

Liquidator believes entering the Deposit Release Agreement is in the best interest of the Lincoln estate and its policyholders, because it will avoid the expense associated with establishing and terminating an ancillary receivership in New Mexico.

Application, ¶¶ 6, 10 (footnote added).

Consistent with the Application, the Agreement recites that “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 that the “New Mexico Property and Casualty Insurance Guaranty Association [] has confirmed that, to the best of its knowledge, it is not responsible for any claims against [Lincoln.]” Agreement at 1 (Recitals, ¶¶ 6, 7). The Agreement provides for the terms of the release of the special deposit, and confirms, *inter alia*, that the monies shall be used to pay the Superintendent’s fees and expenses and the balance shall remain subject to New Mexico claims.

It is well settled that the Liquidator has broad authority to take action that is necessary to conserve or protect the insurer’s assets and property. *See* Section 523 of Article V of the Act, 40 P.S. § 221.23. The Court will defer to the Liquidator’s authority and discretion in administering the estate unless there is an abuse of discretion. *Koken v. Colonial Assurance Co.*, 885 A.2d 1078, 1095 (Pa. Cmwlth. 2005) (single judge op.), *affirmed without op.*, 893 A.2d 98 (Pa. 2006). Based on the above averments in the Application, the terms of the Agreement, and the lack of any objection, the Court sees no abuse of discretion. Accordingly, the Court grants the Application and approves the Agreement.

been paid percentages of their claims equal to the percentage paid from the special deposit.

AND NOW, this **13th** day of **March, 2017**, the Liquidator's Application is **GRANTED**. The New Mexico Special Deposit Release Agreement (Agreement), attached to the Application as Exhibit A, is approved and the Liquidator is authorized to take those actions which are necessary to consummate the Agreement as approved.



RENÉE COHN JUBELIRER, Judge

Certified from the Record

MAR 13 2017

And Order Exit