

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In Re: Excalibur Reinsurance Corporation (In Liquidation) :
: No. 1 ERC 2016

Re: Liquidator's Application for Approval of Final Accounting, Final Distribution and Recommendation for Disposition of Records Pursuant to 40 P.S. § 221.50

MEMORANDUM AND ORDER

Presently before the Court for consideration is the Liquidator's Application for Approval of Final Accounting, Final Distribution and Recommendation for Disposition of Records Pursuant to 40 P.S. § 221.50 (Application).¹ In her Application, the Liquidator represents that: (1) she has provided notice (Notice) of her Application to all known claimants; (2) she has not received any objection to the Notice and more than 30 days have passed since she

¹ On October 28, 2020, in connection with this final step in the liquidation process, the Liquidator filed her Application for Approval of Notice of Final Accounting and Proposed Final Distribution (Application for Approval of Notice of Final Accounting). Therein, the Liquidator attached Excalibur Reinsurance Corporation's Statement of Net Assets Available for Distribution as of June 30, 2020, which reflects assets available for distribution in the amount of \$3,484,712.67, and after withholding a reserve of \$76,000 for future administrative expenses, total net assets available for distribution in the amount of \$3,408,712.67. Application for Approval of Notice of Final Accounting, ¶¶ 2-3; Exhibit (Ex.) A, at 3. According to the Liquidator, she "has collected all the assets deemed worthy of pursuit." *Id.*, ¶ 7. In addition, the Liquidator averred that all claims have been evaluated and that no unresolved objections remain. *Id.*, ¶ 4. The Liquidator further provided an exhibit, which identified all claimants with approved claims and the amount allowed for each claim. *Id.*, Ex. B. The Liquidator set forth her proposed distribution of assets by priority classification and amount. *Id.*, ¶ 6.

Finally, the Liquidator requested this Court's approval of a form Notice to be sent to all claimants regarding the Liquidator's final accounting and proposed final distribution. Application for Approval of Notice of Final Accounting, Ex. C. The Court approved the form Notice on November 30, 2020. There were no objections to the Application for Approval of Notice of Final Accounting.

mailed the Notice on December 2, 2020; and (3) she has responded to all claimant inquiries regarding the Application and has made all address and information corrections required in order to make a proper payment of claims. The Liquidator seeks authorization to make a distribution of assets in accordance with the distribution set forth in her October 28, 2020 Application for Approval of Notice of Final Accounting, which provides that priority class “a” and “b” claims will be paid at 100%, that the Liquidator has already received \$1,431,122.68 in administrative expenses, that priority class “e” claims will be paid at least 4.25%, and that priority class “f” and “g” claims will not be paid. Further, the Application for Approval of Notice of Final Accounting provides that there are no priority class “c,” “d,” “h,” or “i” claims.

In addition, the Liquidator has submitted a recommendation regarding her retention and disposition of Excalibur Reinsurance Corporation records, pre- and post-liquidation, pursuant to Section 550 of Article V of The Insurance Department Act of 1921 (Act),² 40 P.S. § 221.50. *See* Application, Ex. C. The Liquidator recommends that most pre-liquidation records, except pre-liquidation accounting files that contain tax records, be destroyed, as they no longer serve any purpose and will not be required in the future to respond to any post-discharge inquiries. The Liquidator proposes to retain all post-liquidation files until such time that she believes they are no longer needed to respond to post-discharge inquiries. She requests that the Court grant her the discretion to determine the appropriate time to destroy the post-liquidation files.

² Act of May 17, 1921, P.L. 789, *as amended*, 40 P.S. §§ 1-326.7. Article V of the Act, which includes Sections 501 through 563, 40 P.S. §§ 221.1-221.63, was added by the Act of December 14, 1977, P.L. 280.

The Liquidator states that following completion of the final distribution of assets, she will file an application seeking her discharge as Liquidator. *See* Section 548(a) of Article V of the Act, 40 P.S. § 221.48(a).

In considering the Liquidator's request for approval of the final accounting and final distribution, the Court notes that Section 546 of Article V of the Act, directs as follows:

Under the direction of the court, the liquidator shall pay distributions in a manner that will assure the proper recognition of priorities and a reasonable balance between the expeditious completion of the liquidation and the protection of unliquidated and undetermined claims, including third[-]party claims. Distribution of assets in kind may be made at valuations set by agreement between the liquidator and the creditor and approved by the court.

40 P.S. § 221.46. Moreover, “[w]hen all assets justifying the expense of collection and distribution have been collected and distributed under this article, the liquidator shall apply to the court for discharge.” Section 548(a) of Article V of the Act, 40 P.S. § 221.48(a).

After review of both the October 28, 2020 Application for Approval of Notice of Final Accounting, the present Application, and the exhibits attached to each, the Court accepts the Liquidator's representations and recommendation that a final accounting and distribution is now appropriate. Accordingly, the Court enters the following Order:

AND NOW, this 12th day of February, 2021, the Liquidator's Application for Approval of Final Accounting, Final Distribution and Recommendation for Disposition of Records Pursuant to 40 P.S. § 221.50, is **GRANTED** as set forth below.

1. The Liquidator's final accounting, as set forth in the exhibits attached to her October 28, 2020 Application for Approval of Notice of Final Accounting and Proposed Final Distribution (Application for Approval of Notice of Final Accounting), which includes the Statement of Net Assets Available for Distribution as of June 30, 2020, and the Final Court Report (identifying the claimants by name and address, Proof of Claim number, total amount claimed, and total amount allowed), is approved.
2. The Liquidator is authorized to make distribution of the assets of Excalibur Reinsurance Corporation (ERC) in accordance with paragraph 6 of the October 28, 2020 Application for Approval of Notice of Final Accounting, to wit:
 - a. Priority class "a" claims will be paid at 100%. The Liquidator has already received \$1,431,122.68 in administrative expenses.
 - b. Priority class "b" claims will be paid 100%.
 - c. There are no priority class "c" claims.
 - d. There are no priority class "d" claims.
 - e. Priority class "e" claims will be paid at least 4.25%.
 - f. Priority class "f" claims will not be paid.
 - g. Priority class "g" claims will not be paid.
 - h. There are no priority class "h" claims.
 - i. There are no priority class "i" claims.

3. The Liquidator is authorized to destroy the records of ERC in accordance with the recommendation attached to the present Application as Exhibit C.
4. Following the completion of the final distribution of assets, the Liquidator shall file an application seeking discharge of the Liquidator in accordance with Section 548(a) of Article V of the Act, 40 P.S. § 221.48(a). In her application, the Liquidator shall notify the Court whether any administrative expenses remain unpaid and, if so, the amount. The Liquidator shall also notify the Court whether any funds remain undistributed and in the possession and control of the Liquidator; if any funds remain, the Liquidator shall advise the Court of the amount so remaining.



P. KEVIN BROBSON, President Judge