

IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI
DIVISION I

_____))
SCOTT B. LAKIN, Director, Department)
of Insurance, State of Missouri,)
Plaintiff,)
v.) Case No. 99 CV 323050
GENERAL AMERICAN MUTUAL HOLDING)
COMPANY, a Missouri Mutual Holding)
Company,)
Defendant.)
_____)

ACCOUNTING TO THE COURT

COMES NOW, Albert A. Riederer, the Special Deputy Liquidator of General American Mutual Holding Company, and presents this accounting to the Court pursuant to Section 375.1176.6 RSMo 2000.

I. Introduction

The Special Deputy Liquidator ("SDL") presents this accounting to inform the Court about the status of the liquidation of General American Mutual Holding Company ("GAMHC"). The majority of the work at GAMHC focuses on five (5) main areas. First, the execution of the plan to make an initial distribution of one billion dollars (\$1,000,000,000.00) to GAMHC's Eligible Members pursuant to the April 25, 2003, Decree and Order Approving the Special Deputy Liquidator's Verified Application for Approval of a Plan to Make the First Distribution of General American Mutual Holding Company's Assets To Its Eligible Members. ("plan") Second, the

resolution of the "Three Year Indemnity Claims" presented to the SDL by Metropolitan Life Insurance Company ("MetLife") pursuant to provisions of the Stock Purchase Agreement by and between GAMHC and MetLife, Dated as of August 26, 1999, as amended, ("Stock Purchase Agreement") and the GAMHC Plan of Reorganization ("Plan of Reorganization"). Third, the prosecution of a lawsuit against the accounting firm of KPMG, L.L.C., as well as certain partners of that firm, for multiple claims arising out of the liquidity crisis suffered by General American Life Insurance Company ("GALIC") which necessitated this proceeding. Fourth, work related to resolving issues arising from Internal Revenue Service audits of the taxable years 1997 through 2000. Fifth, the administration of the day-to-day operations of GAMHC.

II. Initial Distribution

The SDL and his consultants are continuing to execute the plan to distribute one billion dollars to the Eligible Members of GAMHC in fall, 2003. The plan was created pursuant to Section 4.2¹ of the Plan of Reorganization. In summary, the plan required the SDL to create a Membership Schedule including the Eligible Members of GAMHC and their Membership Interests. After the Membership Schedule was complete, the SDL was to notify all of the Eligible Members of GAMHC of the basis for calculating

¹The Rehabilitator shall formulate a schedule of the Members and the Membership Interests (the "Membership Schedule") based upon the books and records of GAMHC and after consultation with actuaries and other appropriate consultants. Such formulation shall, in the judgment of the Rehabilitator, be fair and equitable to the Members. When the Membership Schedule is complete, the Rehabilitator shall give notice to each Member of the basis for determining the amount of Members' Membership Interests. The Rehabilitator shall apply to the Rehabilitation Court for procedures to give the Members notice of the basis for determining the amount of their Membership Interest and an opportunity to object thereto. In the absence of an objection, or after resolution of any objection, the Membership Schedule shall be final and shall be used to allocate any assets to be distributed to Members under this Reorganization Plan. Any distributions made to Members on account of their Membership Interests prior to senior Claims being paid or reserved for in full shall be subject to approval by the Rehabilitation Court. Distributions to Members shall be made as ordered by the Court.

their Membership Interests and to give them the opportunity to object. The Membership Schedule was completed in February, 2003. The next step of the plan was successfully completed with the notice packet mailing in April, 2003.

A. Notice Packet Mailing

The process of distributing GAMHC's assets to its Eligible Members progressed from the production of the Membership Schedule to the notice packet mailing in April, 2003. GAMHC mailed notices to (1) its Eligible Members and (2) those individuals who had been notified of the rehabilitation proceedings but were later determined not to be members pursuant to the Court's definition of an Eligible Member ("non members"). Through its consultants, EquiServe and PrintMail, GAMHC mailed two hundred ninety-eight thousand one hundred ninety-six (298,196) notice packets to the Eligible Members of GAMHC. In addition, fourteen thousand three hundred sixty-nine (14,369) letters were mailed to the non-members. As expected, this mailing generated a tremendous number of phone calls and inquiries.

EquiServe is operating a Distribution Call Center on behalf of GAMHC using materials approved by the SDL and the Court. As of June 17, 2003, the Distribution Call Center had received eighty one thousand three hundred and seventy eight (81,378) calls from across the United States. The automated voice recorder system answered fifty-four percent (54%) of these calls. The Distribution Call Center operators handled forty-six percent (46%) of these calls. The SDL has received a handful of complaints regarding the operation of the Distribution Call Center, and these have been resolved.

Therefore, the SDL can report that these calls are being handled effectively and professionally.

The Distribution Call Center has enabled the SDL to identify and resolve issues associated with the distribution. The following examples will give the Court an understanding of the diversity of issues raised by the distribution. First, some of the Eligible Members have died since GAMHC went into rehabilitation in August, 1999. Family members and representatives of the deceased Eligible Member's estate have called the Distribution Call Center asking for help. The SDL approved a policy under which the Distribution Call Center operators (1) instruct the caller to contact their legal representative for assistance, and (2) assist the caller with the completion of the taxpayer identification number certification form. Second, some of the Eligible Members are having difficulty filling out the taxpayer identification number certification forms included in the notice packet. ("W-9 form"). The majority of these calls come from trustees, relatives of deceased members, and individuals who owned an eligible policy with other individuals or organizations. By working with EquiServe and GAMHC's tax counsel, the SDL developed instructions for all of these callers. These are a small sample of the issues that the SDL has resolved since the mailing began.

Another issue, and one that proved to be particularly difficult, is the resolution of requests to change the name of an Eligible Member. There are a myriad of reasons for these requests including (1) Eligible Members who have changed their name after a divorce and (2) successor trustees who are asking that the distribution check reflect the

change in trustees. Name changes are difficult for GAMHC, because there is the potential of fraud being perpetuated against the Eligible Members. This Court ordered the SDL to identify the Eligible Members based on the records of GALIC. Therefore, the distribution checks will be written using the same name that was used for the mailing of the Notice Packet. While this solution is not perfect, the recipient should be able to present the check and the appropriate paperwork or other records to his or her bank in order to cash the check.

As mentioned above, GAMHC enclosed a W-9 form with the notice packets that were mailed to the Eligible Members. It was necessary to send the W-9 form so that the Eligible Members would certify their tax-payer identification numbers in advance of the distribution. As of June 17, 2003, one hundred eighty two thousand one hundred and seventy four (182,174) Eligible Members had certified their taxpayer identification numbers. EquiServe is processing these forms and keeping the appropriate records to be used in the future.

As anticipated, a number of notice packets and letters have been returned from the Post Office. As of June 17, 2003, twenty eight thousand three hundred and thirty two (28,332) pieces of mail had been returned by the Post Office. Sixteen thousand four hundred and fifty (16,450) of these were returned without a forwarding address. In addition, four thousand three hundred forty-four (4,344) packets were classified as undeliverable by GALIC, pursuant to their experience with policyholder communications. The SDL believes that these numbers will increase to a peak in July and then decrease to a minimal amount.

The SDL will use both an address research firm and GALIC's records to attempt to locate these Eligible Members. If the member can be found, the plan provides that the SDL will send out a second mailing with an enclosed letter informing the Eligible Member of their new objection deadline. If a member cannot be located by the time of the second mailing, the SDL plans to develop, with the MDI and the Court, a plan for the disposition of these funds.

The SDL and his consultants have begun the planning required to make the first distribution expected for the fall of this year. The distribution checks will be written on an account at Central Bank. Fahnestock will coordinate the funding of the checking account from GAMHC's General Accounts at both Central Bank and A.G. Edwards. The SDL will file a motion by late summer asking the Court to approve the Membership Interests for the first distribution this fall. GALIC is working to modify the Membership Schedule so that distributions to eligible policies involved in an objection can be withheld from the first distribution. When GALIC completes its work, the Membership Schedule will be sent to the actuarial consultants so that the Membership Interests can be finalized. Finally, the file will be given to EquiServe for the check distribution.

B. Objections

As part of the notice mailings, the Eligible Members and non-members were informed of their right to object to the SDL's determination as required by Section 4.2 of the GAMHC Plan of Reorganization. The SDL and his consultants are currently in the process of processing and analyzing the objections. As of June 17, 2003, seven hundred

and twenty six (726) objection forms had been requested and two hundred and thirty eight (238) had been filed with GAMHC. Approximately half of the objections filed are objections to the calculation of the member's Membership Interest. The remainder of the objections comes from non-members disputing the SDL's determination they are ineligible, and from people who are disputing the ownership of eligible policies.

The SDL intends to submit a procedure for evaluating and resolving these objections in August of this year. Resolving objections to the calculation of the Membership Interests will likely be extremely difficult. While the methodology approved by this Court for determining the Membership Interests was the fairest way to distribute GAMHC's assets, the complexity of the calculation made it impractical, if not impossible, to inform each Eligible Member of their exact calculation. Nevertheless, the SDL believes that objectors should be given the numbers behind their calculation. This will require significant time and expense from the SDL's actuarial consultants. Once the initial objection bar date of June 24, 2003, passes, the SDL will have a better understanding of the work and expense that will be necessary to resolve these objections.

The initial review of the objection forms revealed some objections which the SDL believes are clearly incorrect. The SDL's staff will attempt to contact these objectors by phone to explain their mistake and request that they withdraw their objection. The SDL designed a simple objection withdrawal form for the objectors to use. The goal of this effort is to allow these Eligible Members the opportunity to withdraw their objection in enough time to participate in the first distribution.

The resolution of these objections will require considerable time and effort. However, the SDL is confident that GAMHC and its consultants can rise to this challenge and reach resolutions in the most effective way possible. The SDL will keep the Court informed of these efforts as they progress.

II. MetLife's Indemnity Claims

This Court appointed the Hon. Byron Kinder as Special Master to hear the indemnity claims made by MetLife under Article X of the Stock Purchase Agreement. Attorneys for the SDL are planning to meet with the attorneys for MetLife and discuss a specific procedure to be used by the Special Master in resolving these claims. The SDL believes that a procedure should be presented to this Court for its approval later this summer.

III. Lakin v. KPMG

Attorneys for the Liquidator ("the attorneys") filed suit in the Circuit Court of Jackson County, Missouri against KPMG and six (6) individual partners or employees of KPMG on December 12, 2002. This case is pending in front of the Honorable Peggy McGraw. The lawsuit was brought in the name of the Liquidator and the SDL acting on behalf of GAMHC and its individual members. The lawsuit generally alleges that KPMG was negligent, breached its contract, made negligent and intentional misrepresentations, and breached its fiduciary duty to GAMHC and its members during the course of the 1995-1998 audits and that KPMG's conduct caused damage to GAMHC and its members.

Discovery requests, including interrogatories, requests for production of documents, and deposition notices were served on all of the defendants concurrently with the Petition. Although there have been numerous discovery disputes, the attorneys have been conducting discovery as expeditiously as possible. To date, the attorneys have taken the depositions of seven (7) current and former KPMG partners and employees, including three (3) named defendants. KPMG has taken the deposition of one (1) General American former director, August Busch III. The depositions of the remaining defendants and members of the KPMG audit team should be concluded by the end of July. KPMG has also notified other Conning and General American managers or directors. In some cases, the attorneys expect double or triple-tracking depositions, if necessary.

KPMG has filed two (2) dispositive motions thus far in this case and both have been ruled in favor of the Liquidator. Initially, KPMG filed a Motion for More Definite and Certain, which was overruled. Thereafter, KPMG filed a Motion to Dismiss based upon standing, which was also overruled. KPMG also filed in conjunction with its Motion to Dismiss, a Motion that this case be handled as a class action. That Motion was also overruled by the Court.

Because of the complexity of the matter and the history of discovery difficulties in the investigation stage, the Court appointed the Honorable Forest Hanna as a Special Master for the purposes of discovery in this matter. Judge Hanna set a scheduling order, which has subsequently been amended. Currently both parties have a deadline for simultaneous disclosure of expert witnesses on June 30, 2003. Thereafter, the parties

may amend their expert witness list by addition or deletion on July 30, 2003. In addition, the Court has set the date of July 1 as the final date to amend pleadings or bring in additional parties for both sides. Discovery is set to close on December 15, 2003. The case is set for trial on March 29, 2004.

IV. Tax Issues

The tax issues facing GAMHC, including those for years before the sale of its ownership interest in GALIC to MetLife, continue to be extremely complex. The Internal Revenue Service ("IRS") is processing a Notice of Deficiency (for the tax years 1998, 1999 and 2000), refunds for certain other years, and a Nationwide Settlement Initiative (for a 1999 contingent liability transaction). A large payment of taxes will be due shortly under the Notice of Deficiency but the amount to be collected may be reduced somewhat if the effects of the Nationwide Settlement Initiative are included by the IRS. It is possible that further litigation with respect to the IRS tax issues could occur as the result of a request by GAMHC for a refund of the taxes paid or to be paid.

Negotiations are continuing with MetLife regarding the settlement of a number of tax issues arising under Article VIII of the Stock Purchase Agreement. MetLife is holding refunds that should have been paid over promptly to GAMHC in excess of any amount that GAMHC currently owes to MetLife under the indemnification provisions of Article VIII. If the Article VIII negotiations with MetLife are unsuccessful, then the parties will ask this Court to appoint a Special Master to hear these issues.

After the Liquidator settled possible claims against former officers and directors, this Court authorized the deposit of the funds received into a Qualified Settlement

Fund. These funds will eventually be distributed to GAMHC's Eligible Members. The SDL's tax attorneys are preparing a Private Letter Ruling request is being to address tax issues relating to the Qualified Settlement Fund.

V. Day to Day Administration

The SDL continues to administer the day to day operations of GAMHC. The majority of these operations relate to the investment of (1) the proceeds from the sale of GAMHC's ownership interest in GALIC to MetLife and (2) the Qualified Settlement Fund. By the end of the first quarter this year, the sale proceeds had grown from the original \$1,200,000,000 to \$1,380,281,598. The ending market value of the Qualified Settlement fund grew to \$20,121,183. The SDL proactively posted summaries of the investment activities and certified financial statements for 1999-2001 on the Missouri Department of Insurance internet site. The SDL intends to post financial statements for 2002 as soon as possible.

Respectfully submitted,

**GENERAL AMERICAN MUTUAL HOLDING
COMPANY**

Albert A. Riederer, MO. Bar #23619
2800 City Center Square
1100 Main Street
Kansas City, MO 64105
Telephone: 816-842-4625
Facsimile: 816-842-3442

SPECIAL DEPUTY LIQUIDATOR