

IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI

CHLORA LINDLEY-MYERS, Director,)	
Department of Commerce and Insurance,)	
)	
)	
Petitioner,)	
)	Case No. 17AC-CC00005
v.)	
)	
GALEN INSURANCE COMPANY,)	
)	
Respondent.)	

PERIODIC APPLICATION TO DISTRIBUTE ASSETS UNDER EARLY ACCESS PLAN

Chlora Lindley-Myers, Director of the Missouri Department of Commerce and Insurance, in her capacity as Liquidator, of Galen Insurance Company (“Galen”) respectfully requests this Court enter an Order approving her Periodic Application to Distribute Assets Under Early Access Plan (“Periodic Application”). In support of her Periodic Application, the Liquidator states as follows:

1. On May 31, 2017, this Court entered a Judgment, Decree and Final Order of Liquidation (“Liquidation Order”) against Galen, finding Galen insolvent and placing Galen into liquidation. The Court appointed Chlora Lindley-Myers, the Director of the Department of Commerce and Insurance as the Liquidator of Galen.
2. The Application for Approval of Early Access Plan (“Application”) and Early Access Plan filed in this case on May 31, 2018, sets forth the Liquidator’s plan to make early access disbursements out of marshaled assets

to state guaranty associations or foreign guaranty associations having obligations because of the insolvency of Galen, in accordance with Mo. Rev. Stat. § 375.1205. The Liquidator incorporates by reference the Application and the Early Access Plan as if fully set out. Attached hereto as Exhibit A is the form of the Early Access Plan as approved by the Court.

3. This Court approved the Application and the Early Access Plan in its Order dated June 4, 2018.

4. The Application and Early Access Plan provided a reserve for the payment in full of the estimated expenses of administration through conclusion of the liquidation of Galen. The Liquidator has been reviewing and adjusting administrative expense projections. At this time, she estimates administrative expenses and costs for the Galen estate for payment in full of the estimated expenses of administration through conclusion of the liquidation of Galen to be \$1,500,000.

5. The Liquidator remitted her initial disbursement within 120 days after the approval of the Early Access Plan. Pursuant to Mo. Rev. Stat. § 375.1205, the Liquidator seeks to fulfill her duty to remit disbursements annually, if funds are available.

6. Prior to receiving any disbursement from the Liquidator, the Illinois Guaranty Fund, the Kansas Insurance Guaranty Association, the Missouri Property & Casualty Insurance Guaranty Association and the New Jersey Property-Liability Insurance Guaranty Association (each a “Participating Association” and collectively “Participating Associations”) each executed the Early Access Plan indicating their agreement to be bound

by all of the terms and conditions of the Early Access Plan, including agreeing to return to the Liquidator any funds received in excess of such participating associations share of the assets of Galen under the Insurers Supervision, Rehabilitation and Liquidation Act as finally determined.

7. Each Participating Association referenced in paragraph 6 above has periodically reported to the Liquidator accounting for all amounts so disbursed to the guaranty association.

8. The Liquidator has determined that Galen has sufficient assets available to make a *pro rata* Early Access Distribution in accordance with the Early Access Plan, with respect to each participating association.

9. Under the Early Access Plan, the Liquidator shall determine the market value of available assets marshaled at the time of a proposed distribution.

10. The Early Access Plan defines “Available Assets” as “those assets marshaled by the Liquidator as of the time of a proposed disbursement and which, if not in the form of cash or cash equivalents, are readily marketable and in the opinion of the Liquidator could be liquidated for a price that would not result in obtaining less than market value for said assets.” Available Assets do not include assets reasonably held by the Liquidator as a reserve for payment of expenses of administration of the estate of Galen.

11. The Liquidator has determined the market value of available assets for this proposed distribution to be \$1,125,000.

12. Paragraph 2.1 of the Early Access Plan states:

Upon the Court's approval of both this Plan and the Liquidator's periodic Application to Distribute Assets, the Liquidator shall make *pro rata* Early Access Distributions with respect to each Participating Association, subject to the terms and conditions of this Plan. The Liquidator's periodic Application to Distribute Available Assets shall provide for disbursements to the Participating Associations in amounts at least equal to the sum of Covered Obligations and allocated loss adjustment expenses paid by each Participating Association as reported to the Liquidator by that Participating Association in its most recent financial report to the Liquidator, and a reasonable estimate of reserves for unpaid but known Covered Obligations and allocated loss adjustment expenses expected to be paid within one year by each Participating Association. Such Early Access Distributions shall be made from the Available Assets of Galen. In accordance with Mo. Rev. Stat. § 375.1218, if Galen's Available Assets from time to time do not equal or exceed the Covered Obligations to be paid by the Participating Associations, then the amount of Early Access Distributions shall be in the amount of such Available Assets, if any.

13. As of June 30, 2019, the Participating Associations have reported claim payments and allocated loss adjustment expenses in the total amount of \$3,020,651. The claims amounts have not been audited or verified. They are being used exclusively for making the calculations necessary for this Periodic Application. The Liquidator requests that this Court find that inclusion of these reported numbers from the Participating Associations does not constitute approval of the Participating Association's reported numbers or any proofs of claims filed by the Participating Associations in the Galen receivership case. As provided in paragraph 3.3 of the Early Access Plan, the Liquidator will review the proofs of claims in accordance with Mo. Rev. Stat.

§§ 375.1218.2 and 375.1220, and as otherwise required or permitted under Missouri law or procedures approved by the Court.

14. Based on information received from the Participating Associations, the Liquidator calculated a reasonable estimate of reserves for unpaid but known claims and allocated loss adjustment expenses expected to be paid within one year by the Participating Associations to be approximately \$170,000 total.

15. In 2018, the Liquidator remitted Early Access Distributions to the Participating Associations in the total amount of \$767,122.

16. Galen's Available Assets do not equal or exceed the claim payments and allocated loss adjustment expenses incurred by the Participating Associations. Therefore, the amount of the Early Access Distribution will be the amount of Available Assets, which is \$1,125,000.

17. The Liquidator proposes that each Participating Association will receive a *pro rata* distribution from Galen. The amount to be disbursed among the Participating Associations is as follows:

- a) The total amount of loss payments reported by each Participating Association to the Liquidator, plus the allocated loss adjustment expense payments incurred by each Participating Association.
- b) From the amounts reported in subparagraph 17(a) above shall be subtracted the amount of the 2018 Early Access Distribution received by each Participating Association.

- c) A distribution percentage will be determined for each Participating Association by dividing:
- (x) the difference between the amount in subparagraph 17(a) and subparagraph 17(b) for each Participating Association, by
 - (y) the sum of the amounts determined in (x) above for all Participating Associations.
- d) Each Participating Association's share of the disbursement shall be determined by multiplying the percentages expressed in subparagraph 17(c) above to the amount of the available assets of \$1,125,000.

Notice

18. Mo. Rev. Stat. § 375.1205.6 requires the Liquidator to give at least thirty (30) days notice of this Periodic Application and its submission to this Court to each guaranty association or foreign guaranty associations and to the commissioner of the insurance departments of each of the involved states.

19. Mo. Rev. Stat. § 375.1205.6 further provides that the Court may take action on the Periodic Application provided that the required notice has been given.

20. The Liquidator requests that this Court enter an Order approving the Liquidator's Periodic Application thirty days after this Periodic Application is served to each guaranty association or foreign guaranty

association and to the commissioner of the insurance departments of each of the involved states.

WHEREFORE, the Liquidator respectfully requests the entry of an Order approving the Periodic Application to Distribute Assets Under Early Access Plan, and such other and further relief that this Court deems just and proper.

Respectfully Submitted

/s/ Shelley L. Forrest
Shelley L. Forrest
Mo. Bar No. 46455
Receivership Counsel
Missouri Department of Commerce
and Insurance
PO Box 690
Jefferson City, MO 65102
573 522-6115
Shelley.Forrest@insurance.mo.gov
Attorney for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was filed electronically with the Clerk of the Court on October 16, 2019, to be served by operation of the Court's electronic filing system upon all counsel of record and deposited in the United States mail, certified delivery, first class postage prepaid to:

Illinois Insurance Guaranty Fund
150 S Wacker Drive, #2970
Chicago, IL 60606

Illinois Department of Insurance
122 S. Michigan Ave., 19th Floor
Chicago, IL 60603
(312) 814-2420

Kansas Insurance Guaranty Association
1720 S. Bellaire St. Suite 408
Denver, CO 80222

Kansas Insurance Department
420 SW 9th Street

Topeka, KS 66612-1678

Missouri Property & Casualty Insurance Guaranty Association
2210 Missouri Boulevard
Jefferson City, MO 65109

New Jersey Property-Liability Insurance Guaranty Association
233 Mount Airy Road
Suite 100
Basking Ridge, NJ 07920

New Jersey Department of Banking and Insurance
20 West State Street
Trenton, NJ 08625

/s/ Shelley L. Forrest
Shelley L. Forrest

EARLY ACCESS PLAN

This Early Access Plan (“Plan”) sets forth the Liquidator's plan to make early access disbursements out of marshaled assets to state guaranty associations or foreign guaranty associations having obligations because of the insolvency of Galen Insurance Company (“Galen”), in accordance with Mo. Rev. Stat. § 375.1205.

1. Definitions. As used in this Plan, the following terms have the meanings set forth below:
 - 1.1. Affected Guaranty Associations. Affected Guaranty Associations mean those state insurance guaranty associations that, as a result of a Liquidation Order have, or will have, obligations, subject to statutory conditions and limitations on coverage and applicability, to policyholders and claimants under the Policies.
 - 1.2. Available Assets. Available Assets mean those assets marshaled by the Liquidator as of the time of a proposed disbursement and which, if not in the form of cash or cash equivalents, are readily marketable and in the opinion of the Liquidator could be liquidated for a price that would not result in obtaining less than market value for said assets. In all instances the Liquidator shall determine the market value of Available Assets. Available Assets shall not include any amounts in the custody of an ancillary Liquidator in another jurisdiction, or any other amounts held on deposit in another jurisdiction by a state agency, nor do they include those assets reasonably held by the Liquidator as a reserve for payment of (i) expenses of administration of the estate of Galen, (ii) claims of secured creditors, to the extent of the value of the security held, and (iii) claims falling within the priority Class 1 as established in Mo. Rev. Stat. § 375.1218. The Liquidator will provide the calculation of Available Assets to the Participating Associations.
 - 1.3. Court. Court means the Circuit Court for Cole County, State of Missouri, with jurisdiction over the Galen Liquidation under Case No. 17AC-CC00005.
 - 1.4. Covered Obligations. With respect to each Participating Association, Covered Obligations means the obligations of that Participating Association, pursuant to its governing law and subject to statutory conditions and limitations on coverage and applicability, which may arise in connection with Policies of Galen as a result of the Liquidation Order.

- 1.5. Early Access Distributions. Early Access Distributions mean distributions made by the Liquidator to Participating Associations, pursuant to Mo. Rev. Stat. § 375.1205 and subject to this Plan.
- 1.6. Liquidation Order. Liquidation Order means the Order of Liquidation entered by the Court placing Galen into liquidation and declaring Galen to be insolvent.
- 1.7. Liquidation Order Date. Liquidation Order Date means the date on which the Liquidation Order was entered.
- 1.8. Galen. Galen means Galen Insurance Company.
- 1.9. Participating Association. Participating Association means each Affected Guaranty Association that has elected to participate in this Plan by executing this Plan, indicating its agreement to be bound by all of the terms and conditions of this Plan and the final and unappealable orders of the Court with respect thereto.
- 1.10. Policies. Policies means all insurance policies and contracts (if any) issued by Galen for which any Participating Association has Covered Obligations.
- 1.11. Priority of Distribution. Priority of Distribution means the statutory priority to be accorded creditors and claims in the distribution of Galen assets under Mo. Rev. Stat. § 375.1218.
- 1.12. Application to Distribute Available Assets. Application to Distribute Available Assets means the Liquidator's application to make Early Access Distributions in accordance with the Liquidation Order and Mo. Rev. Stat. § 375.1205.
- 1.13. Liquidator. Liquidator means the Director of the Missouri Department of Insurance, Financial Institutions and Professional Registration, in her capacity as liquidator of Galen, her successors in office and any and all special deputy liquidators appointed or hired by the Liquidator with respect to Galen, all agents, legal counsel, actuaries, accountants, consultants and other personnel who are retained by and operate under the control and supervision of the Liquidator, and all personnel who are employees of Galen subsequent to the Liquidation Order Date and who are under the control and supervision of the Liquidator.
- 1.14. Unrecovered Deposits. Unrecovered Deposits mean those deposits of funds or other assets previously made by Galen in certain states which have not been recovered by the Liquidator on behalf of Galen and

which are still held or maintained by a state insurance department, related regulatory official, or Affected Guaranty Association.

2. Plan to Disburse Estate Assets.

- 2.1. Upon the Court's approval of both this Plan and the Liquidator's periodic Application to Distribute Assets, the Liquidator shall make *pro rata* Early Access Distributions with respect to each Participating Association, subject to the terms and conditions of this Plan. The Liquidator's periodic Application to Distribute Available Assets shall provide for disbursements to the Participating Associations in amounts at least equal to the sum of Covered Obligations and allocated loss adjustment expenses paid by each Participating Association as reported to the Liquidator by that Participating Association in its most recent financial report to the Liquidator, and a reasonable estimate of reserves for unpaid but known Covered Obligations and allocated loss adjustment expenses expected to be paid within one year by each Participating Association. Such Early Access Distributions shall be made from the Available Assets of Galen. In accordance with Mo. Rev. Stat. § 375.1218, if Galen's Available Assets from time to time do not equal or exceed the Covered Obligations to be paid by the Participating Associations, then the amount of Early Access Distributions shall be in the amount of such Available Assets, if any.
- 2.2. Subject to Article 4, each Participating Association will be entitled to participate in and receive *pro rata* Early Access Distributions from Galen, as recommended by the Liquidator and approved by the Court after the filing of a Application to Distribute Assets, in the same manner and to the same extent as may be provided to other Participating Associations.
- 2.3. The Liquidator shall offset the amount to be disbursed to a Participating Association by the amount of any special deposit or any other statutory deposit or asset of Galen held in this state or another state that has been actually received by that Participating Association.

3. Obligations of the Participating Associations.

- 3.1. Each Participating Association will return to the Liquidator, within sixty (60) days of the receipt of a written demand from the Liquidator, any Early Access Distributions, or portions thereof, made to such Participating Association (together with income actually earned by such Participating Association on such assets) that are required to pay claims of secured creditors and claims falling within the priorities established in Mo. Rev. Stat. § 375.1218 in accordance with those

priorities. However, if it is necessary for the Participating Association to make an assessment to pay the Reimbursement, the Participating Association shall pay the full amount of the Reimbursement within ninety (90) days after the Liquidator's request is presented to the Participating Association in writing. The Reimbursement amount shall be returned to the Liquidator within the time periods stated herein, unless a reasonable request for an extension of time is requested by the Participating Association and granted by the Liquidator.

- 3.2. Each Participating Association shall periodically file "D Reports" with the Liquidator in accordance with Uniform Data Standards ("UDS") format, which shall satisfy the reporting requirements in Mo. Rev. Stat. § 375.1205.2(4).
- 3.3. Each Participating Association will file a proof of claim for all claims for payment of Covered Claims and allocated loss adjustment expenses of such Participating Association to be asserted against the Galen estate. Such proofs of claim shall be periodically supplemented with appropriate reports prepared in UDS formats. The Liquidator will review such proofs of claims in accordance with Mo. Rev. Stat. §§ 375.1218.2 and 375.1220, and otherwise as required or permitted under Missouri law or procedures approved by the Court.

4. Unrecovered Deposits.

- 4.1. The Liquidator and Participating Associations shall cooperate in good faith and provide reasonable assistance to one another in an effort to collect Unrecovered Deposits either by seeking payment to the Participating Association or by seeking payment to the Liquidator. Such cooperation and assistance shall include, but not be limited to, communicating with the state regulators in possession of the Unrecovered Deposits and executing, as appropriate, either assignments of right to the Participating Associations or acknowledgments that such funds can be returned to and disbursed by the Liquidator as general assets of the Galen estate.
- 4.2. For purposes of calculating and making Early Access Distributions, no Participating Association shall be treated as having received an Unrecovered Deposit unless it actually receives the Unrecovered Deposit.
- 4.3. Early Access Distributions for Participating Associations in states with Unrecovered Deposits shall be calculated and paid but only to the extent necessary for that Participating Association to share on a *pro rata* basis with creditors having the same Priority of Distribution,

taking into account the Participating Association's receipt of such Unrecovered Deposit and any return of the Unrecovered Deposit and previously disbursed Early Access Distributions. If a Participating Association receives Early Access Distributions under this Plan and also receives the Unrecovered Deposit for its state, the Liquidator may request the return of the Early Access Distributions but only to the extent necessary for that Participating Association to share on a *pro rata* basis with creditors of the same level Priority of Distribution taking into account the Participating Association's receipt of such Unrecovered Deposit. If the amount of the Unrecovered Deposit that is received exceeds the amount of claims and allocated loss adjustment expenses incurred by the Participating Association, the Participating Association shall pay the excess amount to the Liquidator.

- 4.4. An Affected Guaranty Association that elects not to participate in this Plan shall not receive Early Access Distributions.

5. Access to Records and Information.

- 5.1. The Liquidator will provide the Participating Associations with reasonable access, during normal business hours, to the books, records and files of Galen under the control of the Liquidator which are reasonably related to Policies giving rise to Covered Obligations or to this Early Access Plan and will respond affirmatively and in good faith to all reasonable requests from the Participating Associations for information, files and documents pertaining to the adjudication, administration and payment of Covered Obligations or the distribution or use of Early Access Distributions pursuant to this Plan.
- 5.2. Each Participating Association will provide the Liquidator with reasonable access, during normal business hours, to the books, records and files of the Participating Association which are reasonably related to Policies giving rise to Covered Obligations or to this Early Access Plan and will respond affirmatively and in good faith to all reasonable requests from the Liquidator for information, files and documents pertaining to the adjudication, administration and payment of Covered Obligations or the distribution or use of Early Access Distributions pursuant to this Plan.
- 5.3. The Liquidator shall, prior to and in connection with the final distribution of assets of this liquidation, be authorized to review the financial accounts and records of the Participating Associations with respect to receipt of assets and Early Access Distributions and with respect to the payment or discharge of Covered Obligations.

6. Notices.

All notices to the Parties shall be in writing, and directed as follows:

To the Liquidator:

Tamara W. Kopp, Counsel to the Liquidator of Galen Insurance Company
Department of Insurance, Financial Institutions and Professional
Registration
301 West High Street
Room 530
Jefferson City, MO 65101
Fax: 573-751-1165
Email: tamara.kopp@insurance.mo.gov

To the Participating Association:

[See address identified in signature block below]

7. No Third Party Beneficiaries. This Plan creates no third party beneficiaries and shall not create any rights or benefits that may be enforced by any persons not party to this Plan.
8. Governing Law and Jurisdiction. This Plan, and all disbursements made under this Plan, shall be governed by Missouri law and shall be subject at all times to the supervision and oversight of the Court.
9. Submission to Jurisdiction. The Participating Association agrees to submit to the exclusive jurisdiction of the Court solely with respect to the enforcement of this Plan or any issue or dispute arising out of the duties and obligations under the Plan, and not for any other purpose. However, nothing in this Plan or participation in it is intended to affect the proper venue or forum for any action arising out of or relating to any other matter or controversy, nor shall the fact that the Participating Association agreed to or executed this Plan, or participated in the Plan, be used for purposes of arguing the proper venue or forum of any such action.
10. Preservation of Rights; Non-Waiver. The execution of this Plan by the Participating Association, and the acceptance by the Participating Association of any amount distributed pursuant to the Plan, shall be without prejudice to the Participating Association's rights with respect to final or other distributions from the estate of Galen. Without limiting the generality of the foregoing, the Participating Association reserves its rights to assert whatever claim the Participating Association deems appropriate with respect to the composition of and priority to be afforded to the Participating Association's claim for its payment of losses, expenses or other amounts, and

its rights with respect to any issues relating to what assets constitute the assets of the estate or otherwise relating to Galen.

11. Counterparts. This Plan may be executed in any number of counterparts, any or all of which may contain the signature of only one of the Parties, and all of which together shall be considered a single original document.

AGREED:

Galen Insurance Company, in Liquidation
By and through Chlora Lindley-Myers, its
statutory and court-affirmed Liquidator
by and through Tamara W. Kopp, Counsel to the Liquidator

By: _____

Printed Name: _____

Date: _____

[STATE] INSURANCE GUARANTY
ASSOCIATION

By: _____

Name: _____

Title: _____

Date: _____