

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.)	

MOTION FOR APPROVAL OF RELEASE OF LETTER OF CREDIT

Chlora Lindley-Myers, Director of the Missouri Department of Commerce and Insurance, in her capacity as Liquidator of Galen Insurance Company (“Galen”), by and through her counsel, respectfully requests this Court enter an Order approving the release of a letter of credit pursuant to § 375.1176, RSMo.

In support of her motion, 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. Pursuant to the Liquidation Order and the Insurers Supervision, Rehabilitation and Liquidation Act, §§ 375.1150, RSMo et seq. (“Liquidation Act”), the Liquidator acts for and on behalf of Galen and is vested by operation of law with title to all of the property, contracts, rights of action, books and records of Galen and is administering them under the general supervision of the Court.
3. Additionally, the Liquidation Order specifically provides that the Liquidator is vested with all of the right, title, and interest in all funds recoverable under treaties, contracts,

and agreements of reinsurance entered into by Galen as a ceding insurer or assuming reinsurer. Liquidation Order, paragraph 9.

4. Pursuant to the Liquidation Order and Liquidation Act, “to the extent that any reinsurer of an insurer in liquidation would have been required under any agreement pertaining to reinsurance to post letters of credit or other security prior to an order of liquidation to cover such reserves reflected upon a statement filed with a regulatory authority, such reinsurer shall be required to post letters of credit or other security to cover such reserves after an insurer has been placed in liquidation.” Liquidation Order at paragraph 9 and § 375.1176.6(2), RSMo.

Galen Medical Malpractice Insurance and Reinsurance

5. Galen was a Missouri-domiciled Chapter 379 property and casualty stock insurance company, authorized to write a single line of insurance business pursuant to § 379.010.1(2), RSMo. Galen provided medical malpractice insurance to physicians, medical professionals and stand-alone surgical centers.

6. Galen’s policies were written on a 12-month, claims-made basis. Galen’s obligation to provide coverage only applies to claims made against its insured while coverage under the policy is in force. Additionally, to be covered, claims must be reported during the policy period unless the insured opted to extend the time during which medical malpractice claims could be reported.

7. As of September 30, 2015, while under administrative supervision, Galen ceased writing new and renewal business. As of October 1, 2016, there could be no new claims on Galen policies, as the claims-made deadlines would have expired, with the possible exception of claims made under policies with extended reporting periods.

8. All policies, including policies with extended reporting periods, were cancelled thirty (30) days after the date the Liquidation Order was entered. Liquidation Order, paragraph

8. Therefore, there could be no claims on any Galen policy after the policies were cancelled because the deadline to report claims, even for policies containing extended reporting period options, would have expired on June 30, 2017, pursuant to the Liquidation Order.

9. Prior to liquidation, JRG Reinsurance Company LTD (“JRG”) issued Medical Professional Liability Excess of Loss Reinsurance Contracts (“Reinsurance Contracts”) to Galen for April 1, 2011 to September 30, 2011, and October 1, 2011 to September 30, 2012.

10. The Reinsurance Contracts provide that to the extent the reinsurer does not qualify for credit with any insurance regulatory authority having jurisdiction over the insurer’s reserves or at the request of the insurer under certain circumstances as described in the Reinsurance Contract, the reinsurer is required to secure its payment obligations by funds withheld, cash advances, entering into a Trust Agreement, or posting a Letter of Credit (“LOC”).

11. JRG did not meet certain statutory requirements in order for Galen to take financial statement credit for the reserves ceded to the reinsurer. Therefore, under § 375.246, RSMo, and 20 CSR 200-2.100, JRG had to post collateral.

12. To satisfy its funding obligations under the Reinsurance Contract, JRG posted a LOC. Comerica Bank issued Letter of Credit No. 655638-01 on January 25, 2012, in favor of Galen for drawings up to \$350,000. BMO Harris Bank N.A. issued a replacement Letter of Credit No. HACH614159OS on January 31, 2020, in favor of Galen for a sum not exceeding \$350,000.

13. Pursuant to the Liquidation Order, in 2017 the Liquidator notified all persons known or reasonably expected to have claims against Galen of (a) the Liquidation Order, (b) the Proof of Claim process, and (c) the claims bar date of April 30, 2018.

14. Upon information and belief, medical malpractice claims under the policies reinsured by JRG have been fully resolved, and no open medical malpractice claims under the Reinsurance Contracts remain.

15. Prior to liquidation, Galen collected all reinsurance available from JRG.

16. Because no claims remain open, and the reserves are \$0.00, JRG has requested that the Liquidator release the LOC. Accordingly, since the LOC is no longer necessary, the Liquidator seeks approval to release the LOC currently held as detailed above.

17. Importantly, a release of the collateral under the reinsurance agreement does not terminate the liability of JRG under the agreement, and in the highly unlikely event that claims arise against JRG, then the Liquidator will seek to collect those amounts due and, where appropriate, seek the reinstatement of appropriate collateral.

Notice of Motion

18. The Liquidator will provide written notice of this Motion to JRG.

19. The Liquidator will post a copy of this Motion on its website:
<https://insurance.mo.gov/galen>.

20. The Liquidator will provide a copy of this Motion to the Missouri Property & Casualty Insurance Guaranty Association, the Illinois Insurance Guaranty Fund, the Kansas Insurance Guaranty Association, the New Jersey Property-Liability Insurance Guaranty Association, and the Maryland Property & Casualty Insurance Guaranty Corporation.

WHEREFORE, the Liquidator requests that the Court grant this motion and issue an Order as follows:

- a) Approving the release of the LOC as set forth herein; and
- b) Affirming and approving in all respects the conduct of the Liquidator, her employees, agents, and counsel in connection with the release of the LOC requested by this Motion.

Respectfully Submitted,
/s/ Shelley L. Forrest
Shelley L. Forrest
Mo. Bar No. 46455
Receivership Counsel
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 June 26, 2023, to be served by operation of the Court's electronic filing system upon all counsel of record.

/s/ Shelley L. Forrest
Shelley L. Forrest