

IN THE CHANCERY COURT OF THE STATE OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY

2008 NOV -7 PM 2:24

LESLIE A. NEWMAN,)
Commissioner of the Tennessee)
Department of Commerce and Insurance,)
)
Petitioner,)

CLERK & MASTER
DAVIDSON CO. CHANCERY CT.

_____ D.C. & M.

v.)

No. 07-1163-IV

NATIONAL FOUNDATION OF)
AMERICA, a Tennessee corporation,)
RICHARD K. OLIVE, an individual,)
SUSAN L. OLIVE, an individual,)
BREANNA MCINTYRE, an individual,)

Respondents.)

COPY

**MOTION TO APPROVE SECOND PARTIAL
INTERIM DISTRIBUTION TO CLASS 2 CLAIMANTS**

Leslie A. Newman, Commissioner of the Department of Commerce and Insurance and Liquidator for National Foundation of America ("NFOA"), by her Special Deputy Liquidator Paul Eggers, whose affidavit is submitted herewith, moves this Court for an order authorizing the Special Deputy Liquidator, pursuant to Tenn. Code Ann. §56-9-332, to distribute \$2,718,577.30 of NFOA's assets to pay remaining Class 2 claims totaling \$6,796,443.29 after the first partial interim distribution, by making a pro rata partial interim distribution at the rate of an additional 14% of the approved total claim amount (i.e., "Total Claim" column) as set forth in Exhibit 1 to the Special Deputy Liquidator's Affidavit. Upon receipt of the proposed second partial interim distribution, which is an additional 14% of the approved total claim amount, each Class 2 claimant will have received a 79% pro rata payment of the total approved claim amount.

In support of this Motion, the Liquidator relies upon the following and upon the Affidavit of Special Deputy Liquidator Paul Eggers along with its Exhibits 1-3 (collectively, the "pleadings") that is being filed contemporaneously herewith and is incorporated by reference herein.

First Partial Interim Distribution Made To Class 2 Claimants

1. On September 11, 2007, the Court ordered the conversion of the Rehabilitation of NFOA to the Liquidation of NFOA. See Final Order of Liquidation and Injunction ("Liquidation Order") (entered Sept. 11, 2007).
2. On May 2, 2008, the Liquidator filed a motion requesting that this Court approve the Liquidator's report and recommendation on the valuation of claims pursuant to Tenn. Code Ann. § 56-9-331 and authorize the Special Deputy Liquidator to make a partial interim distribution of NFOA's assets to pay Class 2 claims pursuant to Tenn. Code Ann. § 56-9-332.
3. The Liquidator's motion and its supporting affidavit established that the total amount of all Class 2 claims was approximately \$19,418,409.40, that the NFOA estate had \$15,202,097.00 available in cash assets, and that the Special Deputy Liquidator on behalf of the Liquidator recommended that \$12,621,966.11 be immediately distributed to Class 2 claimants using a pro rata percentage of 65% of the value of the claims. After making the proposed partial interim distribution, NFOA established that it would have approximately \$2,580,130.89 remaining in cash assets.
4. Upon receiving no objections to the motion, on May 21, 2008, the Court entered an order approving the Liquidator's determination of the valuation of claims and approving the partial interim distribution to Class 2 claimants as recommended by the Liquidator.

5. The Court found that the partial interim distribution ensured that each Class 2 claimant would receive the same pro rata distribution and that no subclasses would be created within Class 2 as required by Tenn. Code Ann. § 56-9-330. Further, the Court determined that the partial interim distribution plan ensured that adequate funds were retained to pay Class 1 administrative costs and expenses of the Liquidation going forward and to pay the same pro rata distribution to any future claimants determined to have Class 2 payment priority.

6. In accordance with the Court's Order, the Special Deputy Liquidator sent by first class U.S. mail the partial interim distribution checks to Class 2 claimants on or around June 25, 2008.¹

Proposed Second Partial Interim Distribution to Class 2 Claimants
Pursuant to Tenn. Code Ann. § 56-9-332

7. The Liquidator has sold all of the real estate owned by NFOA.

8. The NFOA estate currently has \$3,798,596.24 available in cash assets.²

9. Due to the advanced age of the Class 2 claimants (whose average age is 76), the Class 2 claimants are in need of distributions to pay for living expenses. The Liquidator has determined that it would be appropriate to make a second partial interim distribution based in part on the funds received from liquidating NFOA's remaining real property.

¹ On July 9, 2008, the Liquidator filed a motion to stay the partial interim distribution to Thomas S. Baconrind in the amount of \$31,695.98. Mr. Baconrind invested personal assets with NFOA, and he also received commissions totaling \$41,904.99 from NFOA assets for the NFOA illegal annuity contracts that he marketed to his clients and other persons. The Liquidator has demanded that Mr. Baconrind disgorge the commissions that he was improperly paid by NFOA. On August 6, 2008, the Court granted the Liquidator's motion and has stayed the distribution on the Baconrind claim until the Liquidator's demand is resolved. Accordingly, the Liquidator is maintaining the \$31,695.98 amount as a separate entry on the NFOA financial reports and has not included this amount as part of the cash assets of NFOA available for distribution.

² As set forth in Exhibits 2 and 3 of Paul Eggers' Affidavit, NFOA has \$3,870,663.55 in cash assets. Of this amount, \$25,000.00 is reserved to cover estimated administrative expenses through October 31, 2008, and \$47,067.31 is reserved to cover the first interim distribution on the Baconrind claim (see explanation in footnote 1) and the Seissner claim (for which the check remains outstanding and uncashed). Thus, at the time of this proposed distribution, NFOA only has \$3,798,596.24 available in cash assets for distribution.

10. The total amount of all remaining, unpaid Class 2 claims after the first partial interim distribution is approximately \$6,796,443.29.

11. At this time, the Special Deputy Liquidator on behalf of the Liquidator recommends that \$2,718,577.30 be immediately distributed to Class 2 claimants using a pro rata percentage of 14% of the approved total Class 2 claim amount. Exhibit 1 to the Affidavit of Paul Eggers sets forth the amount of the second partial interim distribution to be made to each Class 2 claimant. **The proposed second partial interim distribution, which is an additional 14% of the approved total Class 2 claim amount, will provide each Class 2 claimant with 79% pro rata payment of the total approved value of each Class 2 claim.**

12. After making the proposed partial interim distribution, NFOA will have remaining cash assets totaling approximately \$1,080,018.94.

13. The proposed partial interim distribution ensures that each Class 2 claimant will receive the same pro rata distribution and that no subclasses will be created within Class 2 as required by Tenn. Code Ann. § 56-9-330. Further, the proposed partial interim distribution plan ensures that adequate funds have been retained to pay Class 1 administrative costs and expenses of the Liquidation going forward and to pay the same pro rata distribution to any future claimants determined to have Class 2 payment priority.

14. The Liquidator requests that the second partial interim distribution in the amount of \$6,826.83 to Thomas S. Baconrind be stayed until the Liquidator's demand for disgorgement of commissions totaling \$41,904.99 that Mr. Baconrind received from NFOA during its operation as an unauthorized, illegal insurance entity is resolved. The Liquidator will maintain this second partial interim distribution amount as a separate entry on the financial reports and will not include the amount in cash assets available for future distribution.

15. The Liquidation will continue to seek the disgorgement of commissions paid to approximately sixty-five (65) agents and investment advisors who were unjustly enriched and benefited improperly from the issuance of NFOA's illegal insurance contracts. Several agents have continued to disgorge their commissions. The Liquidation is preparing to take appropriate action against the remaining agents.

16. The Liquidation also has filed a complaint for damages against Richard and Susan Olive, the former President and Vice President respectively of NFOA.

17. In the future, once the Liquidator determines that either all of the available estate assets have been marshaled or that the costs of continuing to marshal any additional assets are greater than any additional assets that might be recovered, the Liquidator will seek an order to make a final distribution from the estate assets.


18. In addition to the service list, the Special Deputy Liquidator will cause the pleadings to be served on the claimants of the estate. The Special Deputy Liquidator will also post the pleadings on the websites of the NFOA Liquidation and the Tennessee Department of Commerce and Insurance.

NOW, THEREFORE, for the foregoing reasons, the Liquidator respectfully requests that the Court enter an order:

- (1) Authorizing, pursuant to Tenn. Code Ann. § 56-9-332, the second partial interim distribution in the amount of \$2,718,577.30 pro rata to Class 2 claimants as set forth in Exhibit 1 to the Affidavit of Paul Eggers; and
- (2) Authorizing the Special Deputy Liquidator to stay the second partial interim distribution in the amount of \$6,826.83 on the Baconrind claim and to maintain this amount as a separate entry on the NFOA financial reports, not to

be included in the amount of cash assets available for future distribution, until the Liquidator's demand for disgorgement of commissions improperly paid to Thomas S. Baconrind by NFOA is resolved.

Respectfully submitted,

By: 
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Special Counsel to Liquidator

THIS MOTION IS SET TO BE HEARD ON FRIDAY, NOVEMBER 21, 2008, AT 9:00 A.M. OR AS SOON THEREAFTER AS IT MAY BE HEARD. IF NO RESPONSE IS TIMELY FILED AND SERVED, THE MOTION SHALL BE GRANTED WITHOUT FURTHER HEARING.

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing has been forwarded via U.S. Mail, postage pre-paid, to the parties and interested entities listed below on this the 7th day of November, 2008.

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City of Franklin, TN (Class 6 Claimant)
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And all of the Class 2 Claimants Listed on Exhibit 1 to P. Eggers' Affidavit whose addresses are filed with the Court under seal.

