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

STATE OF TENNESSEE ex rel. JULIE MIX McPEAK, COMMISSIONER OF COMMERCE AND INSURANCE FOR THE STATE OF TENNESSEE,	)	NF Nos. 03-293 (IV) 03-294 (IV) 03-295 (IV)
Petitioner,	)	
v.	)	
AMERICAN NATIONAL LAWYERS INSURANCE RECIPROCAL (RRG), a Tennessee Domiciled Insurance Company, DOCTORS INSURANCE RECIPROCAL (RRG), a Tennessee Domiciled Insurance Company and THE RECIPROCAL ALLIANCE (RRG), a Tennessee Domiciled Insurance Company,	)	
Respondents.	)	

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DAVIDSON CO. CHANCERY CT
D.C.M.

RTY [PROPOSED] ORDER APPROVING PROPOSED ALLOCATION OF JOINT RECOVERIES TO THE RRG RECEIVERSHIP ESTATES, APPROVING A 50% INTERIM DISTRIBUTION AS SET FORTH HEREIN AND ACCEPTING REPORT AND LISTING OF CLAIMS APPROVED FOR 50% INTERIM DISTRIBUTION, AS SUPPLEMENTED

Before the Court is a Motion filed on October 5, 2011 by the Commissioner of the Tennessee Department of Commerce and Insurance, in her capacity as Statutory Receiver of American Lawyers Insurance Reciprocal (RRG) in Liquidation ("ANLIR"), Doctors Insurance Reciprocal (RRG) in Liquidation ("DIR") and The Reciprocal Alliance (RRG) in Liquidation ("TRA"). The Motion requests the Court to:

1) acknowledge and accept the proposed allocation of jointly recovered funds amongst the three RRG Receivership Estates;

2) approve a 50 distribution to the approved Class 2 claimants of each RRG Receivership Estate; and

3) acknowledge and accept the listings of approved Class 2 claimants that the respective RRGs have presented as final and ready for distribution, pro rata or otherwise.[1]

The Motion further requests that the Court expressly instruct that the order issued in relation to the Motion be entered as a final order as to all matters set forth therein. Rule 54.02 Tenn.R.Civ.P.

The Court notes that there has been only one filing in opposition to the Receiver's Motion and that that opposition has been withdrawn[2]. The Court also notes that there was no appearance in opposition to the Motion at the noticed November 9, 2010 hearing.

Upon review of the Motion and attendant filings, and upon the record in these matters as a whole, the Court finds the Motion well taken.

The Court first finds that the proposed allocation of joint recoveries is reasonable and appropriate. Payment of the approved Class 2 claims of the RRG Receiverships, to the fullest extent possible, is an appropriate exercise of discretion by the Receiver in fulfillment of the fiduciary duties to the three RRG Receivership Estates and their respective claimants. Using the allocation method proposed by the Receiver is a legitimate exercise of her powers over all three

[1] The Court notes that on October 28, 2011, the Receiver filed a Notice of Supplementation of the listings of claims that are exhibits to the Motion. That Notice of Supplementation sets forth additional claims that each RRG has determined, since the October 5, 2011 filing of the Motion, as final and which should be included in the interim distribution approved herein.

[2] On November 2, 2011, DIR Claimants Cubie and Betty Robinson objected to the Motion requesting that their yet-to-be determined claim be added to the listings of claims for which permission was sought to make an interim distribution. The Court has been informed that the Robinsons Claim has been agreed to, that a Notice of Determination will issue shortly from the DIR Receivership Estate, and that the Robinsons Claim will be amongst others submitted in the near future for approval by the Court of interim payment.

RRGs to accomplish that. Additionally, it is fair to allocate joint recoveries in a fashion to address payment of approved Class 2 claims of the three RRGs, to the fullest extent possible, because it was the aggregate Class 2 claim amount of the three RRGs that was used to establish damages in lawsuits which, in turn, yielded the joint recoveries that will be allocated. Therefore, the Court approves the proposed method of allocating joint recoveries, as set forth in the October 5, 2011 Motion, with regard to the payment of approved Class 2 claims.[3]

The October 5, 2010 Motion had attached to it various listings of approved Class 2 claims for which payment of an interim 50% pro rata distribution was sought. As noted earlier, these listings have been supplemented through Notice of Supplementation filed October 28, 2011. See footnote 1 supra. T.C.A. § 56-9-331 provides that the Receiver is to report as to the claims that have been determined as approved claims. Attached as **Exhibit 1** to this Order is the listing of approved Class 2 claims which the ANLIR Receivership Estate reports as ready for payment, pro rata or otherwise. Attached as **Exhibit 2** to the Order is the listing of approved Class 2 claims which the DIR Receivership Estate reports as ready for payment, pro rata or otherwise. And attached as **Exhibit 3** to the Order is the listing of approved Class 2 claims which the TRA Receivership Estate reports as ready for payment, pro rata or otherwise. The Court, through this Order, accepts these Exhibits as the Receiver's report regarding determination and allowance of the listed Class 2 claims against the respective RRG Receivership Estates.[4] In so accepting the listing of claims attached hereto, the Court is aware that further supplementation of the Claim 2

[3] If the Class 2 claims of all three RRGs are fully paid from the joint recoveries pursuant to this allocation method, the Receiver will present further proposed allocation of any remaining funds as it relates to payments of other claims of lesser statutory priority.

[4] On Exhibits 1, 2 and 3, the column denoted as "RRAO Adj Value" is the column showing the approved claim amount of each particular claim.

approved claims, and request for equal interim distribution as to those added Class 2 claims, will occur in due course and upon further filings by the Receiver.

The Court further finds that based upon the assets available for distribution and prudent and conservative reserving for payment of subsequently determined Class 2 claims, as well as Class 1 claims to be incurred, it is appropriate to approve an interim distribution as to the claims listed in **Exhibits 1, 2** and **3** attached. Based upon the information provided, the Court approves an interim distribution of 50% of each approved claim amount listed on those Exhibits.

There is, however, one matter that must be addressed regarding an interim payment of 50% of each claim amount listed in **Exhibits 1, 2** and **3**. At the November 9, 2011 hearing of the pending Motion, the issue was raised and discussed of federal Medicare Secondary Payer laws (e.g. 42 U.S.C. § 1395y(b)(2)) relating to Medicare liens (and potential applicability of similar state law relating to Medicaid liens). The Receiver has not conceded the applicability of such laws to insurers in liquidation, but to the extent that it is determined by the particular RRG Receivership that these Medicare/Medicaid lien laws do apply and, if so, to the extent they apply to distributions on any particular approved Class 2 claim, there may be reporting obligations, as well as potential liability under certain circumstances imposed upon the particular RRG Receivership if those laws are not complied with. To the extent that each RRG Receivership determines that these Medicare/Medicaid lien laws do not apply at all or to the extent that it is determined that these Medicare/Medicaid laws do not apply to any particular claim set forth on the respective attached Exhibits, the 50% interim distribution should proceed unimpeded by the Medicare/Medicaid lien laws issues. However, to the extent that it is determined by the particular RRG Receivership that a claim involves the potential application of the Medicare/Medicaid lien laws, then the interim distribution otherwise allowed herein can be

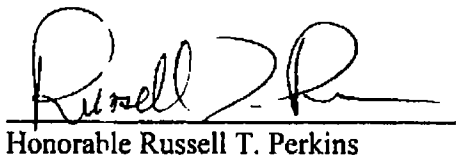
delayed until the appropriate information is provided by the particular claimant regarding any such lien and/or assurances are received by the particular RRG Receivership that no such lien exists (e.g. CMS waivers, etc.) or that distribution payments do not otherwise implicate or violate the Medicare/Medicaid lien laws.

Accordingly, as to the Receiver's request for approval of 50% interim distribution of the approved claim amounts listed on **Exhibits 1, 2,** and **3** hereto, the Court grants that request. However, to the extent that each RRG Receivership determines that the Medicare/Medicaid laws are applicable in the first instance, and, if so, to the extent necessary to address the Medicare/Medicaid lien law issues, the particular RRG Receivership may delay the interim distribution until it has assured itself, through its own investigation if necessary, that no Medicare/Medicaid lien law issues exist, or if they do, that such issues have been addressed. Each claimant who/which is requested to do so, must co-operate with the particular RRG Receivership in relation to this Medicare/Medicaid lien law issue.

In her October 5, 2011 Motion, the Receiver requests, pursuant to Rule 54.02 Tenn.R.Civ.P., that the Order entered in relation to the Motion be entered as a final order in relation to all matters addressed therein. The Court finds that this Order does not address all matters involved in these three RRG Receivership actions. The Court further finds that the RRG Receiverships will rely upon the rulings contained in this Order in taking actions such as allocating joint recoveries and payment of the interim distributions as allowed herein. In doing so, the RRG Receiverships need certainty as to the Court's rulings. For that reason, and there being no just reason for delay, the Court expressly instructs the Clerk and Master to enter this Order as a final order as to all matters contained herein. Rule 54.02 Tenn.R.Civ.P.

Finally, given the broad notice provided in relation to the Motion -- See October 5, 2011 Motion at pp.6-7 -- and given the relative lack of objections to (see footnote 2 supra) and no appearances at the November 9, 2011 hearing in opposition to the Motion, the Court deems it sufficient notice to those affected for this Order, once entered, to be posted on the Tennessee Department of Commerce and Insurance website at www.state.tn.us/commerce/insurance/index.shtml. The Receiver is instructed to post this Order in that fashion as soon as is practicable after the entry of this Order.

IT IS SO ORDERED this the _____day of November, 2011.



Honorable Russell T. Perkins
Chancellor

Approved and Submitted for Entry:

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