

STATE OF NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 19 CVS 8664

MIKE CAUSEY,)
COMMISSIONER OF INSURANCE)
OF NORTH CAROLINA,)
)
Petitioner,)
)
v.)
)
SOUTHLAND NATIONAL)
INSURANCE CORPORATION,)
SOUTHLAND NATIONAL)
REINSURANCE CORPORATION,)
BANKERS LIFE INSURANCE)
COMPANY, COLORADO BANKERS)
LIFE INSURANCE COMPANY,)
North Carolina Domiciled)
Insurance Companies,)
)
Respondents.)

**ORDER APPROVING RECAPTURE
OF AGREEMENT AND
INSTRUCTIONS CONCERNING
PARTIAL DISTRIBUTION OF FUNDS
TO BANKERS LIFE INSURANCE
COMPANY POLICYHOLDERS**

THIS MATTER is before the undersigned on the motion of Mike Causey, Commissioner of Insurance of the State of North Carolina, as Rehabilitator (the “Rehabilitator”) of Bankers Life Insurance Company (“BLIC”). This Motion for Instruction Concerning Recapture of Reinsurance Treaty and Partial Distribution of Funds to Policyholders (the “Motion”) seeks the Court’s authorization, pursuant to N.C. Gen. Stat. § 58-30-85(b) and other applicable provisions of law, (a) to approve the recapture by BLIC of its reinsurance agreement with Colorado Bankers Life Insurance Company (“CBL”), and (b) to modify the Court’s June 27, 2019 Order Granting Motion For Moratorium On Policyholder Surrenders and Other Relief (“Moratorium Order”), and instruct the Rehabilitator to make a one-time pro rata distribution in the amount of 25% to annuity

policyholders of BLIC who have a current claim for annuity proceeds as of the date of the proposed distribution.¹

A hearing on this Motion was conducted on August 4, 2023. Having considered the Motion, the relevant portions of the record, the applicable law, and the arguments of counsel the Court hereby finds as follows:

Recapture of Reinsurance Agreement

1. Effective as of June 30, 2017, BLIC and CBL entered into a Reinsurance Agreement (“Agreement”) whereby BLIC ceded to CBL 100% of the Covered Liabilities for certain Policies specified in Exhibit I to that Agreement, and paid or transferred to CBL all of the gross premiums collected by BLIC for those Policies. BLIC retained the obligation to administer the Policies.

2. The Rehabilitator seeks approval to have BLIC exercise the option to terminate the Agreement and recapture the business ceded to CBL under the Agreement.

3. Article XI of the Agreement provides:

In the event that [CBL] becomes insolvent or a petition for insolvency, rehabilitation, conservation, liquidation or similar proceeding is filed against [CBL] in any jurisdiction (collectively, referred to hereinafter as a “Receivership Petition”), [CBL] shall immediately notify, in writing, [BLIC] of its insolvency or of the filing of the Receivership Petition. If (a) [CBL] is insolvent, (b) a Receivership Petition is filed, or (c) [CBL] is in material breach of any other representation, warranty or covenant under this Agreement, then, in addition to any other remedies allowed by Applicable Law, [BLIC] shall have the option to unilaterally terminate this Agreement and recapture all business ceded or retroceded to [CBL] under this Agreement, after the earliest to occur of (x) [CBL’s] insolvency, (y) the filing of a Receivership Petition or (z) the failure of [CBL] to cure any material breach of any representation, warranty or covenant hereunder within thirty (30) days of receipt of notice of such breach by [CBL]. [BLIC] shall

¹ On April 28, 2023, the Rehabilitator filed a motion related to an additional Colorado Bankers Life Insurance Company distribution. This Court granted that motion at the hearing on June 19, 2023.

notify [CBL] of the reasons for, and the effective date of, the recapture. Such recapture shall be settled pursuant to Section 4 of Article XVI.

4. Article XVI, Section 4, of the Agreement provides:

Subject to the terms and conditions of Section 2 of this Article XVI, [CBL's] liability with respect to any Policy will terminate on the earliest of: (a) the date such Policy is recaptured in accordance with Article XI, the "Recapture Date"; and (b) the date on which all Covered Liabilities with respect to such Policy are fully satisfied. Termination of [CBL's] liability under clause (a) of this Section 3 (sic) is subject to the payment of the Terminal Settlement. In no event shall the interpretation of this Section 3 (sic) imply a unilateral right of [CBL] to terminate this Agreement.

5. Article XVI, Section 5, of the Agreement provides:

If this Agreement is terminated in full or in part pursuant to this Article XVI or in full pursuant to a recapture effected in accordance with Article XI, a net accounting and settlement as to any balance due under this Agreement with respect to the terminated Policies shall be undertaken by [BLIC] and [CBL] (the "Terminal Settlement") with [BLIC] delivering the Termination Report to [CBL] within thirty (30) days after the Termination Date. In the event of a recapture effected in accordance with Article XI, the Terminal Settlement will include the Recapture Premium payable from [CBL] to [BLIC].

Any net payment required under the Terminal Settlement shall be determined on a net basis and as of the date upon which this Agreement is terminated (the "Termination Date"), and shall be paid by [CBL] or [BLIC], as appropriate, no later than fifteen (15) days after delivery of the Termination Report. Net payments required under the Terminal Settlement shall consist of the following with respect to the applicable Policies: the Net Settlement calculated pursuant to the Termination Account, which account shall be rendered as of the Termination Date.

6. Article I, Section 15 of the Agreement defines "Recapture Premium" as CBL's share (100%) of the Statutory Reserves in respect of the Policies as of the Recapture Date.

7. A Receivership Petition has been filed against CBL, thereby satisfying the condition of Article XI of the Agreement.

8. The Special Deputy Rehabilitators of BLIC have determined to exercise the option to terminate the Agreement and recapture the business ceded to CBL under the Agreement, they have notified CBL of this election and the reason for the recapture, have notified CBL that the Recapture Date shall be the most recent month end prior to this Court's approval of the recapture, and that the approximate amount of the Recapture Premium to be paid by CBL to BLIC is \$352.8 million (as of December 31, 2022). At the time of recapture, the range of the Recapture Premium is expected to be approximately \$340 - \$347 million.

9. In addition, as the recapture will have the effect of terminating the Agreement, CBL shall reimburse all outstanding reinsurance recoverables due from CBL on paid claims in the approximate amount of \$8.8 million (as of December 31, 2022). A range of approximately \$18 - \$25 million in reinsurance recoverable is expected at the time of recapture due to anticipated additional claim payments by BLIC. The amount of the reinsurance recoverable will be determined as of the Recapture Date of the Agreement and CBL will wire the total outstanding reinsurance recoverable to BLIC within ten business days of the Court's order approving of the recapture and payment of the outstanding reinsurance recoverable.

10. Had the June 27, 2019 Memorandum of Understanding ("MOU") been timely implemented, with funds flowing into BLIC and CBL through repayment of affiliated assets, the companies could have operated under the Agreement in the normal course. Obstruction of the MOU, and appeal of the May 26, 2022 MOU Judgment and Order, prevented rehabilitation of the companies to going concern status under which the Agreement could have functioned as designed. It is now too late for that to occur timely with respect to the reinsured liabilities.

11. BLIC cannot pay the reinsured liabilities and CBL cannot fully fund its reinsurance obligations under the Agreement due to the high proportion of affiliated assets. Recapture allows

an equitable balancing of risk from the applicable affiliated assets between BLIC and CBL relative to the reinsured liabilities.

12. CBL will fund the outstanding reinsurance recoverable with liquid assets; however, CBL will not have to fund its reinsurance liabilities solely with liquid assets as it would in the normal course, due to rebalancing of affiliated assets under recapture. BLIC will be able to pay a proportion of liabilities that were reinsured with an apportioned amount of liquid assets, also due to rebalancing of affiliated assets under recapture.

13. CBL and BLIC will enter into a Premium Recapture and Pledge Agreement (“Pledge Agreement”), through which CBL will grant BLIC a security interest in the affiliated assets. A draft of the Pledge Agreement, substantially in the form that will be executed by CBL and BLIC, was attached as Exhibit A to the Motion.² The Pledge Agreement is necessary because the affiliated assets cannot be moved from CBL to BLIC and cannot currently be used to pay reinsured liabilities. CBL and BLIC intend and have agreed to share the recovery or loss for each affiliated asset. Accordingly, the Pledge Agreement sets forth the percentage interest that CBL and BLIC will have in each asset, and it specifies that BLIC’s interest in the affiliated assets shall not exceed the amount of Recapture Premium pledged, which, as of December 31, 2022, was approximately \$134.9 million. As set forth herein, the Pledge Agreement fairly distributes the risk of the affiliated assets for the benefit of CBL and BLIC policyholders and does not create a preference in violation of the Order of Rehabilitation.

14. Recapture will additionally enable BLIC to timely distribute 25% of account value to annuity holders as set out below through the equitable apportionment of risk from affiliated

² The Pledge Agreement shall become effective on the date upon which both (a) the North Carolina Commissioner of Insurance has approved CBL’s request to pledge, hypothecate, or encumber the Collateral pursuant to N.C. Gen Stat. § 58-13-25(a), and (b) this Motion is approved. The Special Deputy Receivers have shared the draft Pledge Agreement with the Commissioner’s office, which has indicated that the Commissioner will have no substantive changes.

assets. The BLIC distribution will occur at the same prorata amount as the CBL partial withdrawal, approval of which was granted by this Court. Thus, all policyholders of CBL and BLIC will be treated equitably, without preference to one company or the other.

15. Partial withdrawal distributions by BLIC and CBL are essential for policyholders because of the appeal of the Liquidation Order, which delays payments to policyholders by state life and health insurance guaranty associations (“SGAs”).

16. Obstruction of MOU implementation, appeal of the MOU Judgment and Order, and appeal of the Liquidation Order, all have acted to prevent payments to policyholders from affiliated assets and from SGAs. The only currently available source to provide much needed funds to policyholders of BLIC and CBL is through distribution of liquid assets held by the companies. The recapture and partial withdrawals would allow this to occur equitably.

17. The Recapture Premium to be paid by CBL to BLIC will consist of approximately 38% affiliated assets and 62% cash and marketable securities. This is the same ratio of affiliated asset to cash and marketable securities that is carried by CBL as of year-end 2022. The final ratio will be calculated as of the Recapture Date. This transfer will not benefit or compromise CBL’s asset portfolio after the payment to BLIC and will be needed by BLIC to have an adequate amount of cash and marketable securities to fund the requested partial withdrawal payment as discussed below as well as funding on-going operations.

18. BLIC will have sufficient cash and marketable securities as shown in the following table based on approximate year-end 2022 figures:

Cash and marketable securities at year-end 2022	\$211.9 million
CBL reimbursement of past unpaid claims	\$8.8 million
Recapture of BLIC to CBL reinsurance (62% of \$352.8)	\$217.9 million

Total available cash and marketable securities	\$438.6 million
Cash for on-going operations	(\$188.7 million)
Cash needed for requested partial withdrawal	(\$176.8 million)
Remaining cash and marketable securities	\$73.1 million

19. This recapture by BLIC and the transfer of Recapture Premium and all outstanding reinsurance recoverables due from CBL to BLIC is not a preference under N.C. Gen. Stat. § 58-30-150. Instead, it is aligning the affiliates’ assets with the liabilities and treating the policyholders of both BLIC and CBL fairly and consistently in accordance with the Agreement.

20. Recapturing this business from CBL will provide BLIC with necessary capital to fund operational expenses and permit a limited distribution as set forth herein. At the same time, BLIC recapturing this business from CBL will eliminate a substantial reinsurance liability of CBL. Also, BLIC cannot support a partial withdrawal program like the one previously requested for CBL without recapture of the business and reserves previously ceded to CBL.

MORATORIUM ON SURRENDERS & WITHDRAWALS

21. The Rehabilitator also seeks to modify the Moratorium Order.

22. Prior to being placed into rehabilitation, BLIC issued various annuity contracts and riders (collectively, the “Contracts” or individually, a “Contract”). BLIC currently has approximately 8,700 Contracts in force. For purposes of this Order the defined terms “Contracts” or “Contract” do not include certain small account value BLIC annuities (“Small Annuities”) that are treated separately under the Order Modifying Moratorium Order and Instruction on Policy Surrenders, entered by this Court on July 18, 2023.

23. Some of the Contracts provide that the owner (“Contract Owner”) may surrender the Contract for its full surrender value or make a withdrawal of less than the surrender value, until the earlier of (a) the maturity date; (b) the death of the owner; or (c) the death of the annuitant (if the owner is not a natural person).

24. The Moratorium Order, *inter alia*, imposed a moratorium on loans, annuitizations and cash surrender rights under policies of Respondents, and ordered that the Rehabilitator adopt and implement a policy to provide substitute benefits in lieu of the contractual obligations of the Respondents for policyholders who petition for payment under claims of legitimate hardship.

25. Claims for certain benefits under policies such as death benefits, health insurance claims, payments on annuities that have reached the contractual maturity date, required minimum distributions on IRAs, recently approved interest-only payments, interest payments activated prior to Rehabilitation, annuitizations payments activated prior to rehabilitation, and financial hardship payments, continue to be paid in rehabilitation as exceptions to the Moratorium Order and are not subject to this Order.

26. The Rehabilitator possesses broad statutory powers to deal with the property and business of the insurer. N.C. Gen. Stat. § 58-30-85(b).

27. The Rehabilitator has determined that after BLIC recaptures the CBL Agreement, BLIC will have adequate funds available for a one-time pro rata distribution in the amount of 25% of the Contract account values to annuity Contract Owners of BLIC who have a current claim for annuity proceeds as of the date of the proposed distribution (“Partial Withdrawal”). This Partial Withdrawal covers all current BLIC Contract Owner claims under annuity policies.

28. The Rehabilitator therefore has requested that the Court modify the Moratorium Order and instruct the Rehabilitator to make a one-time pro rata distribution in the amount of 25%

of the Contract account value to annuity Contract Owners of BLIC who have a current claim for annuity proceeds as of the date of the proposed distribution.

29. Modification of the Moratorium Order will allow the Rehabilitator to distribute a pro rata amount of account values to all annuity Contract Owners. There will be no preferential treatment of any Contract Owners compared to other policyholders due to the pro rata basis for the distribution.

30. The Rehabilitator shall notify the Contract Owners by sending each of them a letter that will provide the Contract's value.

31. The letters shall explain that the Rehabilitator will automatically distribute a pro rata amount of 25% of the Contract account value, less any applicable tax withholding, fees and surrender charges as outlined in the annuity contract, the amount that will be distributed, and that transfers or exchanges will be allowed. Letters shall explain that some Contract Owners can request a waiver of surrender charges under the language of some Contracts, and that the Redemption Fee will be waived for some Contract Owners who were prevented from requesting a withdrawal during the free withdrawal periods. Contracts without an applicable surrender charge shall also receive the distribution automatically. The letters shall provide notice that if a Policyholder is a resident of a Community Property State (AZ, CA, ID, LA, NV, NM, TX, WA and WI), then any distribution may be Community Property. Copies of the letters, substantially in the form that will be sent to the Contract owners, are attached to the Rehabilitator's Motion as Exhibits B, C and D.

32. While this pro rata distribution will include some Contracts that are still in their partial surrender charge period, it is necessary to include those so that all annuity Policyholders

can receive the distribution and are treated equally under their contracts, and they will be able to request waiver of the surrender charges.

33. The Contracts on form ICC14-SPDACD Pol 3/14 allow a Contract Owner to Request a free withdrawal one year after the Effective Date, of 10% of the Account Value. The amount of the Free Withdrawal must be at least \$200. The Contract also provides that “If We deny Your Request for a waiver of a withdrawal charge, We will notify You in writing of Our decision and give You the opportunity to accept or reject the proceeds, including any withdrawal charges.” Accordingly, the Rehabilitator proposes to notify each ICC14-SPDACD Pol 3/14 Contract Owner that they may request a waiver of the withdrawal charge, and provide instructions for the Contract Owner to request a waiver of the withdrawal charge. *See Exhibit B* to Motion.

34. The Contracts on form SPDA INT+ POL VA 3-12 allow the Contract Owner to withdraw all or any part of the Cash Surrender Value at any time prior to the Maturity Date. Withdrawals are subject to a minimum of \$1,000 per withdrawal. Except as described in the Death Benefit provision of this Contract and for withdrawals made in the 30-day window at the end of the guarantee period, any amounts withdrawn are subject to a Redemption Fee. The Moratorium Order prevented these Contract Owners from exercising their right to withdraw any part of the Cash Surrender Value during the 30-day window at the end of the guarantee period. Accordingly, the Rehabilitator proposes to waive the Redemption Fee on this partial withdrawal. The letter to these Contract Owners will explain that the Redemption Fee is waived for this one-time partial withdrawal. *See Exhibit C* to Motion.

35. This pro rata distribution will benefit all eligible Contract Owners equally by providing immediate access to benefits that had been suspended by the Moratorium Order.

36. The Rehabilitator's proposal is fair and equitable, and will not cause undue or material harm to other policyholders or creditors of BLIC, or to the general public, and will not result in any preference.

37. The total payout is estimated to equal approximately \$177 million.

38. The Special Deputy Rehabilitators' investment advisors have determined that after the recapture BLIC would have sufficient funds available to fund the distribution resulting from this proposed modification to the moratorium.

Based on the foregoing findings, the Court concludes that the Rehabilitator's Motion for Instruction Concerning Recapture of Reinsurance Treaty and Partial Distribution of Funds to Policyholders should be granted for good cause shown and in the Court's discretion.

NOW THEREFORE, pursuant to N.C. Gen. Stat. § 58-30-85(b) and other applicable provisions of law, it is ORDERED as follows:

1. That the Rehabilitator's Motion for Instruction Concerning Recapture of Reinsurance Treaty and Partial Distribution of Funds to Policyholders is ALLOWED; and

2. That BLIC shall recapture the Reinsurance Agreement and payment of all outstanding reinsurance recoveries due from CBL to BLIC; and

3. That the Premium Recapture and Pledge Agreement attached as Exhibit A to the Motion is approved; and

4. That the Moratorium Order is modified to allow the Rehabilitator to make a one-time pro rata distribution in the amount of 25% of the Contract value, less any applicable tax withholding, fees and surrender charges as outlined in the annuity contract, to annuity Contract Owners of BLIC who have a current claim for annuity proceeds as of the date of the proposed distribution; and

5. That the letters attached as Exhibits B, C and D to the Motion are approved, and the Rehabilitator shall notify the Contract owners by sending letters in the substantial form of the letter attached as Exhibits B, C, and D to the Motion, to each Contract owner; and

6. That the payment by the Rehabilitator of this one-time pro rata distribution, is not a preferential payment; and

7. That the Moratorium Order otherwise remains in full force and effect.

SO ORDERED this 4th day of August, 2023.



The Honorable A. Graham Shirley, II
Superior Court Judge Presiding

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