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WAKE COUNTY

SUPERIOR COURT JUDGES OFFICE

BY:SS

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

WAKE COUNTY

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,)

Defendants.)

ORDER MODIFYING
MORATORIUM ORDER

THIS MATTER is before the undersigned on the motion of Mike Causey, Commissioner of Insurance of the State of North Carolina, as Rehabilitator (“Rehabilitator”) of Colorado Bankers Life Insurance Company (“CBL”), moving the Court, pursuant to N.C. Gen. Stat. § 58-30-85(b) and other applicable provisions of law, 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 Colorado Bankers Life Insurance Company (“CBL”) 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 June 19, 2023. Having considered the Rehabilitator’s motion, the relevant portions of the record, the applicable law, and the arguments of counsel the Court hereby finds as follows:

1. The Rehabilitator seeks to modify the Court’s June 27, 2019 Order Granting Motion For Moratorium On Policyholder Surrenders and Other Relief (the “Moratorium Order”).

2. Prior to being placed into rehabilitation, CBL issued certain annuity contracts and riders (collectively, the “Contracts” or individually, a “Contract”). CBL currently has approximately 65,000 Contracts in force. For purposes of this Order the defined terms “Contracts” or “Contract” do not include certain small account value CBL annuities that are treated separately under a Motion to Modify Order Granting Motion for Moratorium and Instruction on Policy Surrenders, filed on May 3, 2023.

3. 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).

4. 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.

¹ The Rehabilitator will make a further motion related to an additional Bankers Life Insurance Company distribution.

5. 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.

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

7. The Rehabilitator has determined that CBL has 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 CBL who have a current claim for annuity proceeds as of the date of the proposed distribution (“Partial Withdrawal”). This Partial Withdrawal covers all current CBL Contract Owner claims under annuity policies.

8. 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, less any applicable tax withholding, fees and surrender charges as outlined in the annuity contract, to annuity Contract Owners of CBL who have a current claim for annuity proceeds as of the date of the proposed distribution.

9. 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.

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

11. The letter shall explain that the Rehabilitator will automatically distribute a pro rata amount of 25% of the Contract account value unless the Contract Owner opts out of the distribution due to surrender charges in some Contracts, shall state the amount that will be distributed, less applicable fees and surrender charges, 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, that some Contract Owners who would have to pay a surrender charge under their Contract language can opt out of the distribution, and that Contracts with only a *de minimis* surrender charge (such as \$25) will receive the distribution automatically. Contracts without an applicable surrender charge would 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 A, B, C, and D.

12. While this pro rata distribution will include some Contracts that are still in their partial surrender charge or withdrawal fee periods, it is necessary to include those so that all annuity Policyholders can receive the distribution and are treated equally under their contracts. Those annuity Contract Owners with more than *de minimis* surrender charges will be able to opt out of the distribution. They will also be able to take the distribution with a surrender charge and move the funds to higher interest bearing investments, and will have the advantage of receiving funds now instead of waiting for liquidation which has been delayed significantly by appeal.

Any Contract Owner who does not opt out due to a surrender charge will receive the distribution automatically.

13. The Contracts on form ICC17C-SPDACD Pol 0517 allow a Contract Owner to Request a free withdrawal one year after the Effective Date, of 10% of the Account Value. 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 shall notify each ICC17C-SPDACD Pol 0517 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 A to Motion.*

14. The Contracts on form ICC16C-FDPA provide for an automatic waiver of surrender charges for a portion of partial surrenders as follows:

- (a) During each Contract Year after the first, You may make a Partial Surrender derived from up to 5% of the Account Value as of the most recent prior Anniversary Date without incurring a Surrender Charge.
- (b) You may do so only once per Contract Year and not during the first Contract Year.
- (c) This 5% Surrender Charge free Partial Surrender is cumulative for Contract Years in which no Partial Surrender is made, up to a total of 20%. If no Partial Surrender is made in any given Contract Year, the 5% Surrender Charge free Partial Surrender for that Contract Year may be added to the percentage available for a Surrender Charge free Partial Surrender in the next Contract Year, up to a total of 20%.

15. Because these Contract Owners may incur a Surrender Charge, the letter to these Contract Owners shall set forth the amount of the surrender charge applicable and provide the Contract Owner an opportunity to opt out of this Partial Withdrawal program. *See Exhibit B.*

16. The Contracts on form ICC11C-FPDA provide that “Withdrawals are subject to Withdrawal Fees. The Withdrawal Fee will be deducted from the proceeds of each Withdrawal as a percentage of the Withdrawal, but not to exceed the maximum dollar amount shown on the Contract Specifications. The minimum withdrawal amount is \$250 and the Withdrawal Fee is 5% not to exceed \$25.00.” The Rehabilitator proposes to explain the calculation of the Withdrawal Fee in the letters to the Contract Owner. The Rehabilitator does not propose an opt-out for these annuities because the amount of the withdrawal fee will be a *de minimis* amount (will not exceed \$25.00). *See Exhibit C.*

17. 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.

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

19. The total payout is estimated to equal approximately \$444 million. As of December 31, 2022, CBL had cash and marketable securities totaling approximately \$1.25 billion.

20. The Rehabilitator’s investment advisors have determined that CBL has 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 to Modify 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 to Modify the Court's June 27, 2019 Order Granting Motion For Moratorium On Policyholder Surrenders and Other Relief is ALLOWED and 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 CBL who have a current claim for annuity proceeds as of the date of the proposed distribution; and
2. That the letters attached as Exhibits A, 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 A, B, C, and D to the Motion, to each Contract owner.
3. That the payment by the Rehabilitator of this one-time pro rata distribution, is not a preferential payment; and
4. That the Moratorium Order otherwise remains in full force and effect.

June 28, 2023



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

6/28/2023 8:09:48 AM