

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

**STATE OF TENNESSEE
ex rel. HODGEN MAINDA,
COMMISSIONER OF COMMERCE
AND INSURANCE FOR THE STATE OF
TENNESSEE,**

No. 03-294-(IV)

Petitioner,

v.

**DOCTORS INSURANCE RECIPROCAL
(RRG), a Tennessee Domiciled Insurance
Company,**

Respondent.

**DIR LIQUIDATOR'S MOTION, PURSUANT TO T.C.A. § 56-9-333,
TO TRANSFER UNCLAIMED FUNDS REMAINING AS OF DECEMBER 3, 2020 TO A
"CLOSED ESTATE FUND" MAINTAINED BY THE COMMISSIONER**

I. BACKGROUND

The DIR Liquidation Estate has paid millions of dollars of adjudicated and approved claims through the course of these liquidation proceedings. In some instances, however, those claim payments have not been deposited by the claimant and/or have been returned to the DIR Special Deputy Receiver as "undeliverable," "address not valid," "no forwarding address,"¹ etc. Reasonable and good faith efforts have been made to contact the claimants at issue, including extensive internet searches and further mailings and telephone calls, some of which were successful in making contact with the claimants who, in turn, were paid the approved claim amounts. Despite those efforts, as of April 30, 2020, an amount of \$596,719.07 in unclaimed

¹ As set forth in the Proof of Claim forms utilized in this liquidation process, the claimant submitting a Proof of Claim has the responsibility of informing the DIR Special Deputy Receiver of any changes in address/contact information.

funds remains relating to final adjudicated and approved DIR claims. That amount is on deposit in an account for DIR at Regions Bank (Acct No. XXXX-8318).

To address this issue of unclaimed funds, on November 18, 2018, the DIR Liquidator moved the Court, pursuant to T.C.A. § 56-9-333, for authority to hold the unclaimed funds for a period of two (2) years and thereafter to further apply to the Court as to final disposition of any remaining unclaimed funds. The Court, on December 3, 2018, entered its order, made final pursuant to Rule 54.02 Tenn. R. Civ. P., which granted the DIR Liquidator's motion and held that:

The DIR Liquidator, by and through her Special Deputy Receiver, is hereby authorized:

- (1) to hold the DIR unclaimed funds in Regions Bank Acct No. XXXX-8318 for a period of two (2) years,
- (2) to pay from the above-referenced unclaimed funds the approved amount of any valid "unclaimed funds" claimant that comes forward in that two (2) year period, and
- (3) to further address, at the end of that two (2) year period, remaining unclaimed funds as allowed under T.C.A. § 56-9-333.

December 3, 2020 is two (2) years from the December 3, 2018 entry of the Court's order authorizing the DIR Liquidator to hold the DIR unclaimed funds. From December 3, 2018 to present, there has been no claimant to come forward to claim any of his/her/its portion of the unclaimed funds. To the extent such occurs before December 3, 2020, the claimant will be paid his/her/its approved claim amount from the unclaimed funds held by the DIR Liquidator.

II. REQUESTED ULTIMATE DISPOSITION OF UNCLAIMED FUNDS

Under T.C.A. §56-9-333(a), after the two (2) year period referenced above has elapsed, the DIR Liquidator has the discretion to either:

[distribute any unclaimed funds] to approved claimants who have previously received a distribution, if it is economically feasible for the liquidator to make the distribution

OR

the liquidator may apply to the court for permission for the funds to be held by the commissioner for the purpose of defraying the costs and expenses of administration of other insolvent insurers for which there are insufficient assets to fund the costs and expenses of administration. With the approval of the supervising court, the liquidator may deposit unclaimed and withheld funds into a segregated account to be known as the closed estate fund, hereinafter the “fund”. The commissioner may thereafter use moneys held in the account to fund the administrative expenses of proceedings against persons subject to this chapter that lack sufficient assets to fund administration.

In these DIR Liquidation Proceedings, all claimants of all classifications have been paid the final adjudicated and approved amounts of their claims (except, of course, those who have failed to claim their funds). Therefore, the “approved claimants who have previously received a distribution” – as set forth in T.C.A. § 56-9-333(a) – have already received 100% of his/her/its approved claim. Accordingly, and under the discretion afforded in T.C.A. § 56-9-333(a), the DIR Liquidator applies to this Court for permission to transfer, on or after December 3, 2020, the DIR unclaimed funds in Regions Acct # XXXX-8318 to a “closed estate fund” controlled by the Commissioner. The use of those funds – payment of administrative costs of insolvent insurers with insufficient funds – is statutorily mandated. Moreover, having funds available to expend on such administrative costs is appropriate and reasonable because it enhances the Commissioner’s ability to address / regulate insolvent insurers through the rehabilitation / liquidation process set forth in T.C.A. § 56-9-101 et seq.

The DIR Liquidator is aware that he, through his Special Deputy Receiver, is requesting an order now to approve the future transfer (in December 2020) of the DIR unclaimed funds to a closed estate fund controlled by the Commissioner. The DIR Liquidator so requests because it is realistic to assert that these DIR Liquidation Proceedings – once thought to have to remain open until late 2022 – can be effectively closed in December 2020. The DIR Liquidator has learned

that recently passed COVID-19 federal legislation will allow him to gain the remaining tax refund benefit owed to DIR this year. Prior to the COVID-19 federal legislation, the tax refund owed to DIR would not have been completely paid until 2022. The DIR Liquidator, through his Special Deputy Receiver has filed the DIR Liquidation Estate's 2019 tax return and anticipates payment of what remains to be paid regarding the tax refund by September, 2020. That has enabled the DIR Liquidator to plan for the DIR Liquidation Proceedings to effectively close by the end of 2020.

Disposition of the unclaimed funds held by the DIR Liquidator is a matter that must occur prior to the closing of the DIR Liquidation Proceedings. As the DIR Liquidator plans further actions toward that end, there is need to know that what remains of the DIR unclaimed funds, as of December 3, 2020, will be allowed to be placed into a "closed estate account" under the control of the Commissioner for use to defray the costs/expenses of administration of insolvent insurers that do not have sufficient funds to pay those costs/expenses. *See* T.C.A. § 56-9-333(a). Knowing that now – i.e. knowing of the Court's approval that any DIR unclaimed funds remaining as of December 3, 2020 will be so treated – will allow the DIR Liquidator, through his Special Deputy Receiver, to better forecast, budget and prepare for the actions (including the transfer in December 2020 of the remaining unclaimed funds into a "closed estate account") needed to effectively close these DIR Liquidation Proceedings in December 2020.

III. NOTICE

The DIR Special Deputy Receiver has employed reasonable and good faith efforts to locate the claimants of the remaining unclaimed funds, but without success. That situation compels the conclusion that efforts to notify those claimants of this Motion would be futile. Therefore, to address reasonable notice of this Motion, the DIR Liquidator, through his appointed Special Deputy Receiver, will post a copy of this Motion on the Tennessee

Department of Commerce and Insurance website (<https://www.tn.gov/commerce/insurance/company-resources/insurance-company-actions.html>) and will serve the Tennessee Attorney General's Office with a copy of this Motion.

IV. REQUEST FOR ORDER TO BE ENTERED AS FINAL AS TO ALL MATTERS ADDRESSED HEREIN

This Motion seeks relief that needs to be relied upon in advancing the progression of the DIR Liquidation Proceedings toward closure. But the relief afforded through granting this Motion does not address all matters at issue in the DIR Liquidation Proceedings. In order to provide certainty with regard to the relief granted, the DIR Special Deputy Receiver requests that the Court expressly find that there exists no just reason for delay and that the Order granting this Motion be entered as final regarding the matters addressed in that Order. Rule 54.02 Tenn. R. Civ. P.

V. CONCLUSION

Accordingly, the DIR Liquidator, by and through his Special Deputy Receiver, moves the Court to approve, pursuant to T.C.A. § 56-9-333(a), the transfer of all of the DIR unclaimed funds remaining in Regions Bank Acct No. XXXX-8318 as of December 3, 2020, to a "closed estate fund" under the control of the Commissioner.

Respectfully submitted,



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Counsel for the DIR Special Deputy Receiver

NOTICE OF HEARING

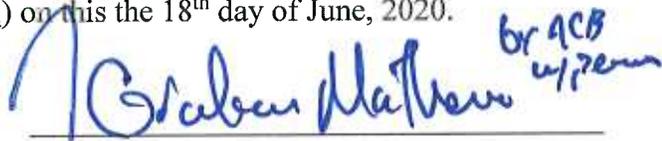
THIS MOTION IS SET TO BE HEARD ON FRIDAY, JULY 10, 2020 AT 9:00 A.M. (CENTRAL TIME) IN THE COURTROOM FOR THE CHANCERY COURT OF DAVIDSON COUNTY, TENNESSEE (PART IV) LOCATED AT THE METRO COURTHOUSE IN NASHVILLE, TENNESSEE. ANY RESPONSE IN OPPOSITION IS TO BE FILED WITH THE COURT AND SERVED ON ABOVE-NOTED COUNSEL ON OR BEFORE MONDAY, JULY 6, 2020. IF NO RESPONSE IS TIMELY FILED AND SERVED, THE MOTION CAN BE GRANTED WITHOUT FURTHER NOTICE.

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing has been delivered by e-mail transmission and U.S. Mail, First Class postage prepaid, to the following on this 18th day of June, 2020:

Sarah A. Hiestand, Senior Counsel
Office of the Attorney General
State of Tennessee
Post Office Box 20207
Nashville, TN 37202-0207
Sarah.Hiestand@ag.tn.gov

I further certify that a copy of this Motion was posted on the Tennessee Department of Commerce and Insurance website (<https://www.tn.gov/commerce/insurance/company-resources/insurance-company-actions.html>) on this the 18th day of June, 2020.


Counsel to the DIR Special Deputy Receiver

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