

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

AT RICHMOND, MAY 21, 2009

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COMMONWEALTH OF VIRGINIA

at the relation of the

STATE CORPORATION COMMISSION,

Plaintiff,

v.

CASE NO. INS-1991-00068

FIDELITY BANKERS LIFE
INSURANCE COMPANY,

Defendant

ORDER APPROVING PLANS OF LIQUIDATION FOR
FIDELITY BANKERS LIFE INSURANCE COMPANY TRUST
AND FIRST DOMINION MUTUAL LIFE INSURANCE COMPANY
AND RELATED MATTERS

On December 2, 2008, came Alfred W. Gross, as Deputy Receiver ("Deputy Receiver") of Fidelity Bankers Life Insurance Company Trust ("Trust") and First Dominion Mutual Life Insurance Company (formerly Fidelity Bankers Life Insurance Company) (hereinafter, "First Dominion" or "Company"), pursuant to VA. CODE ANN. § 38.2-1519 and 5 VAC 5-20-80, and respectfully applied to the State Corporation Commission ("Commission") for orders: (1) setting a hearing on the proposed plans of liquidation for the Trust and First Dominion ("Plans of Liquidation"); (2) establishing a response date for those persons wishing to oppose the Plans of Liquidation; (3) approving notice procedures for the hearing on the Plans of Liquidation; and (4) approving, after the hearing, the Plans of Liquidation, the notice procedures related thereto, and all related matters as described therein ("Application").

The Application recited the history of the Company's receivership, including the formation of the Trust and First Dominion, the Rehabilitation Plan and its implementation.¹ Additionally, the Application set forth the Deputy Receiver's proposed Plans of Liquidation, which contemplate and provide details regarding: (1) the transfer of the remaining assets and liabilities of the Trust to First Dominion; (2) subsequent termination of the Trust; (3) the distribution of the remaining assets of First Dominion to satisfy, in part or in full, as applicable, its remaining liabilities; and (4) the liquidation of First Dominion.

On December 17, 2008, the Deputy Receiver filed with the Clerk of the Commission an Application for Order Approving Fifth Amendment of Agreement and Declaration of Trust, seeking an order from the Commission, extending the term of the Trust from December 31, 2008 to December 31, 2009. On December 19, 2008, the Commission entered an order granting the extension of the Trust term to December 31, 2009. This action renders moot the Deputy Receiver's request, presented in the Application, that the Commission extend the term of the Trust. Thus, it need not be addressed again in this order.

On December 18, 2008, the Commission issued its Order Setting Hearing on Plans of Liquidation for Fidelity Bankers Life Insurance Company Trust and First Dominion Mutual Life Insurance Company, Establishing Response Date, Approving Plans of Liquidation, Approving Claims Bar Date and Related Matters ("Scheduling Order"). The Scheduling Order set a hearing on the Plans of Liquidation for March 24, 2009, and required the Deputy Receiver to provide notice of said hearing to all known current policyholders, creditors, and claimants in the books and records of the Trust and First Dominion. The Scheduling Order further required notice by

¹ The Application presents a thorough summary of the events and record in this proceeding and is not recounted here.

publication in the Richmond Times-Dispatch, The Wall Street Journal, and USA Today for at least one day each week for two consecutive weeks, beginning no later than February 6, 2009.

The Scheduling Order required the Deputy Receiver to file with the Commission prepared testimony and exhibits of each witness expecting to present direct testimony in support of the Application on or before February 6, 2009. All persons who expected to appear at the hearing for the purpose of supporting, opposing, or commenting upon the Plans of Liquidation or related actions requested by the Application were instructed to file, on or before February 20, 2009, a notice of participation as respondent with the Commission and provide a copy to the Deputy Receiver. Further, all such persons were required to file with the Commission and deliver a copy to the Deputy Receiver, no later than March 10, 2009, the prepared testimony and exhibits of each witness expecting to present direct testimony in support of, in opposition to, or related to the Plans of Liquidation or related actions requested in the Application.

Pursuant to the Scheduling Order, on February 6, 2009, the Deputy Receiver filed with the Commission prepared testimony and exhibits of three witnesses, Alfred W. Gross, Michael E. McLoone, and John D. Piller, in support of the Application. No other person or interested party filed either a notice of participation as respondent or any testimony.

On March 9, 2009, the Deputy Receiver filed supplemental exhibits to provide evidence of his compliance with the Scheduling Order's directives regarding notice of the hearing by direct mail and publication.

On March 24, 2009, the Commission convened a hearing on the Application. At the hearing, no party other than the Deputy Receiver appeared. The Commission received the testimony and exhibits of the Deputy Receiver's three witnesses, Alfred W. Gross, Michael E. McLoone, and John D. Piller. During the proceeding, the Commission accepted the testimony

and exhibits of these witnesses and also requested a supplemental exhibit providing detail on the breakdown of distributions to claimants owed \$50 or less. The Deputy Receiver filed that exhibit with the Commission on April 15, 2009.²

In the Application, the Deputy Receiver advised the Commission of his efforts to recover a special deposit posted by First Dominion and held by the State of New Mexico for the benefit of First Dominion policyholders and creditors residing in that state. Because New Mexico had been unwilling to release the special deposit on terms acceptable to the Deputy Receiver, the Application proposed that First Dominion would offset the special deposit and accrued interest thereon being held by the State of New Mexico against the Plan Dividend owed to policyholders in that state, pay the remaining Plan Dividend liability to the corresponding policyholders from First Dominion assets, to the extent of those assets, and direct the policyholders in the State of New Mexico to seek that portion of the Plan Dividend corresponding to the offset directly from officials in that state. The Application noted further that the Deputy Receiver's proposal assumes that the State of New Mexico has not voluntarily released the special deposit to First Dominion before the Plan Dividend payment distributions are made, but if it did voluntarily release such deposit, then the payment procedure in paragraph 42 of the Application (whereby proceeds of the special deposit would be applied toward the claims of that state's residents) would be implemented by the Deputy Receiver.

After the hearing, the Deputy Receiver continued to negotiate with the State of New Mexico regarding the special deposit. On April 30, 2009, the Deputy Receiver filed a supplemental submission in which he reported to the Commission that he has reached an

² Deputy Receiver's Supplemental Exhibit in Support of Application on Plans of Liquidation for Fidelity Bankers Life Insurance Company Trust and First Dominion Mutual Life Insurance Company, Establishing Response Date, Approving Plans of Liquidation and Related Matters, 2009 Exhibit 5.

agreement with the State of New Mexico, pursuant to which the special deposit has been released to the Deputy Receiver for distribution to Plan Dividend claimants in New Mexico as proposed in paragraph 42 of the Application.³ Because the special deposit has been recovered, the proposal in the Application regarding special treatment for New Mexico claimants is now moot, and the Commission need not address it further.

NOW THE COMMISSION, after consideration of the Application, testimony and exhibits, the entire record in this matter, and the applicable law, is of the opinion that the Deputy Receiver's proposed Plans of Liquidation should be approved, except as modified herein.

Accordingly, IT IS ORDERED THAT:

1. First Dominion, as grantor of the Trust, is the rightful owner of the Trust's assets and liabilities, and the Deputy Receiver is authorized, upon receipt of a favorable Closing Tax Letter, to transfer the remaining assets and liabilities of the Trust to First Dominion before the Trust's expiration on December 31, 2009.

2. The Deputy Receiver is authorized to issue a directive pursuant to which he may begin the liquidating payments from First Dominion as provided in the Application (but contingent upon approval of the requested relief and receipt of a favorable Closing Tax Letter), provided that no other unforeseen or priority contingencies arise that may delay the payments. The Deputy Receiver is further given discretion to determine the timing and amount of distributions, including whether multiple distributions will be made, based on the availability of assets and other circumstances as are then known to the Deputy Receiver.

³ Deputy Receiver's Supplemental Submission in Support of Application on Plans of Liquidation for Fidelity Bankers Life Insurance Company Trust and First Dominion Mutual Life Insurance Company, Establishing Response Date, Approving Plans of Liquidation and Related Matters.

3. The liabilities of the Trust should be paid in the same order of priority from First Dominion as they would have been paid from the Trust (*i.e.*, in accordance with the order of priority set forth for the Trust in the Commission's Final Order dated September 29, 1992, and the version of VA. CODE ANN. § 38.2-1509 in effect on May 13, 1991).

4. For Plan Dividend claimants, the Deputy Receiver can pay the Plan Dividend amounts directly to the Plan Dividend claimant or such claimant's beneficiaries. Further, the Deputy Receiver is authorized to set the timing and amount of any Plan Dividend payments, subject to his discretion, based on the availability of assets and the extent of First Dominion's other obligations or contingencies.

5. The Deputy Receiver's proposed payment procedure for Plan Dividend balances of \$50 or less in which such claimants would not receive Plan Dividend payments unless requests for such payments were first made by the claimants to the Deputy Receiver is modified to apply only to claimants with Plan Dividend balances of \$25 or less. Such claimants will be required to request payment from the Deputy Receiver.

6. To the extent that the Company has sufficient assets in the future, the Deputy Receiver can pay a portion of the general creditor claims, provided that such payment does not create a preference of creditors. Any general creditor payment must preserve sufficient funds for claims of greater priority, administrative expenses, and reserves for the wind down of First Dominion. Further, the timing and amount of general creditor payments, if any payments can be made, are subject to the discretion of the Deputy Receiver based on the availability of funds and extent of First Dominion's other obligations as provided herein, and any payment for general creditors may be made in multiple distributions or at the end of the receivership. As discussed previously, no objections to the Deputy Receiver's Application were filed by any general creditor, and no

person appeared to oppose the Application. However, in the event that any future objection is filed, the Deputy Receiver may credit interest on Plan Dividend payments (*i.e.*, during the period of such resulting delay in payment of the Plan Dividend that may be caused by the general creditor's objection) so that general creditors do not financially benefit, at the expense of Plan Dividend claimants, from a delay in the implementation of the Plans of Liquidation. Further, if interest is paid on Plan Dividend claims, the credited interest will be equal to the Company's net investment income earned on the assets reserved for the Plan Dividend payments.

7. In the event that he cannot find any person or entity owed funds by First Dominion, the Deputy Receiver is authorized to deliver such unclaimed funds to the custody of the state of that person's last known address, as shown by First Dominion's books and records, pursuant to the procedures established by that state's unclaimed property laws.

8. The Deputy Receiver is authorized to establish a Twenty Million Dollar (\$20,000,000) initial reserve for administrative expenses and contingencies pursuant to VA. CODE ANN. § 38.2-1509, and this initial reserve will be set aside and will not be available for the payment of any priority, Plan Dividend, or general creditor claims unless the Deputy Receiver, in his discretion, determines that any portion of such initial reserve was no longer needed for the Company's affairs. Further, the Deputy Receiver is authorized, in his discretion, to increase or lower the amount of the aforementioned initial reserve to the extent that closing and other contingencies warrant an additional or lower reserve, including any additional reserve for a receivership estate closure beyond year 2010.

9. The Deputy Receiver is authorized to create a trust (in the form of the trust submitted as Exhibit D to the Application) to hold any funds for unsatisfied liabilities, including any unclaimed property if the applicable state unclaimed property laws did not permit him to deliver

any such unclaimed funds to the relevant states prior to the date that First Dominion would cease to exist and the receivership would terminate, and any such trust is authorized to retain and disburse funds according to the trust's purpose and provisions. The Deputy Receiver is authorized to include an amount, as then determined by the Deputy Receiver, as may be necessary to cover expenses for the administration and wind down of the trust. The Deputy Receiver is authorized, in his discretion, to appoint a trustee for the trust so that the Deputy Receiver may be discharged from receivership obligations when the receivership estate is closed by order of the Commission.

10. Returned payments on the Opt-Out Annuities can be delivered to the custody of the state of that person's or entity's last known address, as shown by First Dominion's books and records, pursuant to the procedures established by that state's unclaimed property laws.

11. The Assumption Reinsurance Agreement between Genworth and the Deputy Receiver (attached to the Application as Exhibit C) to be implemented upon Commission approval, or thereafter upon all requisite approvals from other state jurisdictions, without any changes to the policies' obligations or terms is hereby approved. In regard to Genworth's assumption reinsurance of First Dominion's policy obligations: (1) the waiver of any requirement that the Company or Deputy Receiver obtain policyholder or annuitant consent for Genworth's assumption of First Dominion's insurance policy obligations, except for any policyholder consent required by Colorado or as may be later required by any other state jurisdiction is approved; (2) the Assumption Certificate, which is attached as Schedule 1.1 to the Assumption Reinsurance Agreement (Exhibit C), is hereby approved as a policy form for the assumption of First Dominion's policies; and (3) for any state departments of insurance that will require approval of the Genworth reinsurance transaction or Assumption Certificate or

policyholder consent, First Dominion's policy obligations will be cancelled 120 days after the Commission's order for any state jurisdiction whose insurance department or policyholders have not, as of that time, approved or consented to the reinsurance transaction or Assumption Certificate to the reasonable satisfaction of the Deputy Receiver, and the Deputy Receiver will thereupon pay the policy benefits arising from such termination. In regard to the one New York insurance policy obligation not assumed by Genworth, First Dominion may retain such New York policy liability until it may: (1) pay the policy funds; (2) legally escheat the policy funds under applicable escheat laws; or (3) transfer the policy funds to the Exhibit D trust if escheat is not legally permissible before the final wind up of First Dominion's affairs.

12. The Deputy Receiver is authorized to: (1) use third parties and contractors to administer the Company's affairs, as may be necessary or desirable, to complete the wind down and liquidation of First Dominion; and/or (2) enter into agreements under which third parties or contractors, in exchange for reasonable consideration, will assume certain obligations and contingencies of the Company, if it will expedite and benefit the wind down and liquidation of First Dominion.

13. The Deputy Receiver is authorized to finally liquidate and dissolve First Dominion and its management company, First Dominion Corporation, upon completion of the above steps.

14. The Deputy Receiver must return to the Commission for an order approving the termination and closure of these receivership proceedings.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to:
Patrick H. Cantilo, Esquire, Cantilo & Bennett, L.L.P., Special Deputy Receiver, Fidelity Bankers Life Insurance Company, 11401 Century Oaks Terrace, Suite 300, Austin, Texas 78758; and the Commission's Bureau of Insurance and Office of General Counsel.