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ATTORNEYS FOR PETITIONER

**IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS  
DIVISION 15**

VICKI SCHMIDT,	)	
COMMISSIONER OF	)	
INSURANCE,	)	
<i>In her Official Capacity</i>	)	
	)	
Petitioner,	)	Case No. 2023 CV 494
	)	
vs.	)	
	)	
MutualAid eXchange	)	
	)	
Respondent.	)	

**FIFTH CLAIMS REVIEW REPORT**

COMES NOW Commissioner of Insurance, Vicki Schmidt, in her capacity as Liquidator (“**Liquidator**”) of MutualAid eXchange (“**MAX**”), by and through counsel, and pursuant to KSA 40-3642, presents to this Court the Liquidator’s Fifth Claims Review Report.

On August 22, 2023, this Court entered a Judgment, Decree and Order of Liquidation with Finding of Insolvency (the “**Liquidation Order**”) against MAX. The Liquidation Order and the Kansas Insurers Supervision, Rehabilitation and Liquidation Act, K.S.A. §§ 40-3605 et seq.(the “**Act**”), set forth the claim adjudication procedures, and the Liquidation Order set the deadline for filing Proofs of Claim (“**POCs**”) as August 23, 2024 (the “**Bar Date**”).

To date, 803 POCs have been submitted to the Liquidator. The Court previously approved the Liquidator’s recommended determination for 751 POCs. 784 POCs have received final determinations (446 denied, 338 approved or approved in part), and 10 POCs allowed as contingent. The contingent POCs belong to State Insurance Guaranty Associations (“**SGAs**”) and remain contingent until all claims handled by each SGA are closed and the closure is reported back to MAX.

### **Liquidator’s Fifth Claims Review Report**

The Liquidator, by and through the Special Deputy Receivers (“**SDRs**”), has reconsidered one POC previously allowed as contingent, and one that was moved from allowed to denied.

#### **1. Reconsideration of Proofs of Claim:**

This Court approved the Liquidator’s recommendation in her Fourth Claims Review Report to allow the Indiana Insurance Guaranty Association’s (“**IIGA**”) POC in the amount of \$2,314,870.45. The Liquidator provided a notice of determination to IIGA that detailed the allowed amount \$2,314,870.45. The IIGA thereafter notified the Liquidator that it discovered an

error in the UDS records it provided reporting UEP. The error resulted in the IIGA underreporting its UEP payments. IIGA subsequently revised the record. The Liquidator recommends revising the allowed amount to reflect the actual UEP payments made by the IIGA and revising the 2% Class 2 expense calculation based on the actual UEP payments made by the IIGA, for a total allowed amount of \$3,841,765.69.

One SGA has closed all claims and have completed their reporting to the Liquidator. The Liquidator therefore recommends allowing, as Priority Class 2 claims, (1) the total amount of unearned premium and policy claim payments made by the SGA, and reasonable Adjusting and Other (“AO”) expenses. The reasonable AO expenses was determined to be 2% of the amount of UEP claim payments made by the SGA plus the actual expense or 10% of the amount of policy claim payments made by the SGA, whichever is less. Accordingly, the Liquidator recommends allowing the following amounts:

POC #	Filed By	UEP & Claims	UEP Expens	AO Expense	Total Amount Allowed
1-00258	Nebraska P&C Insurance Guaranty Association	\$2,710,766.60	\$23,303.08	\$154,561.28	\$2,888,630.96

The final reconsideration is for POC 1-00449 (James Bonner, Centralia, IL 62801). After the Liquidator recommended to allow the POC, MAX received a UDS record from the Illinois Insurance Guaranty Association confirming that it paid the full amount of the claim to Mr. Bonner. Allowing the POC would result in a double recovery. Accordingly, the Liquidator recommends revising the determination from **Allowed** to **Denied**.

## 2. Review of Additional Proofs of Claim

The Liquidator reviewed 29 POCs that she recommends denying. Twenty-seven of these POCs sought policy benefits or unearned premiums (“UEP”). The Liquidator transferred these

policy and UEP claims to the affected SGAs, which paid the amount due or covered by the policies.

Accordingly, the Liquidator recommends denying the following POCs:

POC #	Filed By	Address	Recommendation	Amount Allowed
1-00150	Moira Winters	Valley, NE 68064	Denied	\$0.00
1-00177	Garrett Grove	Waterloo, IA 50701	Denied	\$0.00
1-00202	Cristina Berger	Bellevue, NE 68147	Denied	\$0.00
1-00205	Keith Redlin	Elkhorn, NE 68022	Denied	\$0.00
1-00291	Gregory Swafford	Omaha, NE 68116	Denied	\$0.00
1-00295	James Weiss	Omaha, NE 68022	Denied	\$0.00
1-00297	Laurie Kantor	Omaha, NE 68144	Denied	\$0.00
1-00298	Janis Savin-Frederick	Omaha, NE 68122	Denied	\$0.00
1-00300	Theodore Pollack	Omaha, NE 68116	Denied	\$0.00
1-00304	Glen Bruneau	Omaha, NE 68164	Denied	\$0.00
1-00305	Mark Hansen	Omaha, NE 68136	Denied	\$0.00
1-00306	Rebecca Sukup	Omaha, NE 68138	Denied	\$0.00
1-00318	Bryttni Morrow	Gering, NE 69341	Denied	\$0.00
1-00367	Matthew Davis	Kearney, NE 68845	Denied	\$0.00
1-00398	Chad Ellison	Omaha, NE 68154	Denied	\$0.00
1-00425	Kristine Callahan	Omaha, NE 68144	Denied	\$0.00
1-00429	Lindsay Brown	Omaha, NE 68116	Denied	\$0.00
1-00431	Steven & Jennifer Minino	Omaha, NE 68116	Denied	\$0.00
1-00437	Lacey Sukstorf	Omaha, NE 68118	Denied	\$0.00
1-00467	Kristin Deoss	Norfolk, NE 68701	Denied	\$0.00
1-00468	Jacob Thone	Norfolk, NE 68701	Denied	\$0.00
1-00469	Wade Herley	Norfolk, NE 68701	Denied	\$0.00
1-00471	Kyle Lindhorst	Lindsay, NE 68644	Denied	\$0.00
1-00477	William Rainey	Lincoln, NE 68505	Denied	\$0.00
1-00513	Roy King	Omaha, NE 68164	Denied	\$0.00
1-00558	Ronald & Patricia Hutchins	Stuart, IA 50250	Denied	\$0.00
1-00597	Nicole Arseneau	Pleasant Hill, NE 45359	Denied	\$0.00

KSA 40-3641 provides that

The priority of distribution of claims from the insurer's estate shall be in accordance with the order in which each class of claims is herein set forth. Every claim in each class shall be paid in full or adequate funds retained for such payment before the members of the next class receive any payment. No subclasses shall be established within any class.

The Liquidator has determined that two POCs would fall into a priority class lower than Priority Class 2. Accordingly, the Liquidator recommends that the following POCs be *deemed denied* because the Liquidator does not anticipate that MAX's Estate will have assets adequate to

pay Priority Class 2 claims in full. In the event Estate assets are such that a distribution to a lower priority class is possible, the Liquidator will reopen these claims solely for purposes of adjudicating and paying on a *pro rata* basis (with all other claimants in a particular class) the following POCs:

POC NO.	FILED BY	Address	Recommendation	Amount Allowed
1-00068	Timothy Wellner (Subro Major Case) on behalf of Travelers Insurance	Hartford, CT 06102-5076	Deemed denied	\$0.00
1-00758	Gray Reed	Dallas, TX 75201	Deemed denied	\$0.00

The Liquidator also completed her review of three POCs where each claimant experienced losses under their policies that exceeded the statutory maximum paid by the affected SGA – both UEP claims. Accordingly, the Liquidator recommends allowing the amount covered by the policy that is in excess of the SGA statutory maximum. The Liquidator recommends allowing each POC as a priority Class 2 claim as follows:

POC NO.	FILED BY	Address	Recommendation	Amount Allowed
1-00460	Casey Jeffery	Sturgis, SD 57785	Allowed in part	\$100.00
1-00557	Michael Gilbert	Osceola, IA 50213	Allowed in part	\$100.00
1-00803	Lavonnda Hargrave Hamlin	High Point, NC 27265	Allowed in part	\$50.00

WHEREFORE, the Liquidator hereby requests that the Court approve her claim recommendations.

Respectively submitted,

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