

2) On May 22, 2017, the Liquidator filed a Final Accounting and Recommendations as to Conditions and Procedures for Closing the Estate (“Final Accounting”). However, consistent with the recommendations of the Liquidator contained in Article VI of the Final Accounting and this Court’s Order dated May 24, 2017, consideration of the Final Accounting and close-out of the

estate have been withheld while the Liquidator sought a release from the Federal Government (“Federal Release”).

3) The Liquidator now reports that the Federal Release has been obtained. It is, therefore, recommended that the Court authorize and direct the Liquidator to provide notice of the Final Accounting, this Petition and the proposal to close the estate as set forth herein. Once said notice has been provided, the Liquidator petitions the Court to consider and approve the Final Accounting, so that the estate can be closed consistent with the updated recommendations contained in this Petition.

A. NOTICE OF FEDERAL RELEASE

4) After filing the Final Accounting and consistent with the Court’s May 24, 2017 Order, the Liquidator compiled and submitted to the United States Department of Justice certain information regarding the Benicorp liquidation, as required to request a Federal Release.

5) The Department of Justice advised counsel for the Liquidator last year that the Government would execute a Federal Release. After review of an initial draft and clarification of certain terms, the Federal Government, by and through the United States Department of Justice, and the Liquidator, by and through the Special Deputy Liquidator, reached agreement on and have executed a Federal Release, a copy of which is attached hereto as Exhibit A.

B. PETITION FOR COURT TO CONSIDER THE FINAL ACCOUNTING

6) Having entered into the Federal Release, the Liquidator now requests the Court to review and approve the Final Accounting and this Petition, with the Court’s consideration to occur after the Liquidator provides notice of the Final Accounting, this Petition and the proposed closing of the estate, as recommended herein. As described in detail in the Final Accounting, as reconfirmed in this Petition and as supported by the Affidavit of the Special Deputy Liquidator

Michael P. Dinius, attached hereto as Exhibit B, the liquidation of Benicorp has been completed in accordance with Ind. Code 27-9-3. The estate should, therefore, be closed, consistent with the updated recommendations set forth in Section C below. An overview of the Final Accounting is set forth in this Section B for the Court's review.

7) On July 16, 2007, this Court entered a Confidential and Verified Seizure Order against Benicorp in accordance with Ind. Code 27-9-2-2. See Final Accounting Section 1.

8) On August 9, 2007, after a hearing in open Court, an Order of Rehabilitation was entered against Benicorp in accordance with Ind. Code 27-9-3-6. See Final Accounting Section 2. On that same day, the Court also entered an Order approving a Plan to Facilitate the Transition of Benicorp's Existing Business ("Transition Plan") as recommended by the Commissioner. See Final Accounting Section 2. Pursuant to the Transition Plan, United Healthcare ("UHC") provided quotation proposals to all employer groups then insured by Benicorp, including their agents or brokers, in which UHC offered to provide health coverage for the employees of such groups commencing on October 1, 2007, with no declination of coverage due to pre-existing conditions or otherwise. See Final Accounting Section 3.

9) On October 5, 2007, after another hearing in open Court including presentation of evidence, an Order of Liquidation was entered against Benicorp pursuant to Ind. Code 27-9-3. The Order found Benicorp to be insolvent, appointed the Commissioner (and his successors in office) as Liquidator of Benicorp and directed that Benicorp be liquidated in accordance with Ind. Code 27-9-3 and under the general supervision of the Court. See Final Accounting Sections 5-7.

10) As of the date the Order of Liquidation was entered, over ninety-nine percent (99%) of the employer groups (whose coverage had been provided by Benicorp on the Order of Rehabilitation date) had transferred their group coverage (including covered individuals within

their group) to other solvent insurers. Approximately sixty (60%) of the former Benicorp insureds transferred to UHC and approximately forty percent (40%) to other health insurers. Coverage under the few Benicorp policies which then still remained in effect promptly terminated thereafter, as the remaining Benicorp insureds transferred coverage to solvent insurers or as such policies were terminated by the applicable State Life and Health Insurance Guaranty Associations, consistent with their enabling acts and after providing prior notice to the insureds. As of January 1, 2008, virtually all Benicorp policies had terminated and no Benicorp policy was in effect as of January 1, 2009. See Final Accounting Section 4.

11) As a result of the finding of insolvency and entry of the Order of Liquidation, the Life and Health Insurance Guaranty Associations in the 28 states in which Benicorp was licensed to do business (hereafter collectively the “Affected Associations”) assumed certain obligations for unpaid claims that arose prior to the transfer/termination of Benicorp’s policies, consistent with and subject to the coverage obligations and limitations set forth in their respective enabling acts (“Covered Claims”). The Affected Associations, the National Organization of Life and Health Insurance Guaranty Associations (“NOLHGA”) and the Liquidator entered into a Service Agreement, as reviewed and approved by the Court, to facilitate the identification and processing of the Covered Claims. The Service Agreement also helped expedite the funding of the Covered Claims by the Affected Associations. Consistent with the Indiana Insolvency Act, the Affected Associations have the right to assert against the Benicorp Estate both Class 1 claims for their administrative costs and expenses and Class 2 claims for Covered Claims which they funded. See Final Accounting Section 10.

12) The total of Covered Claims that were reviewed, adjudicated and funded by the Guaranty Associations was \$51,412,703. See Final Accounting Sections 41 through and including

Section 45. As also explained in the Final Accounting: (i) certain Affected Associations had statutory rights to access monetary deposits that Benicorp had filed in their respective states prior to the Order of Liquidation (“State Deposits”) to satisfy, in whole or in part, the obligations of the Affected Associations in those states; and (ii) the Liquidator previously made early access distributions to NOLHGA, for the benefit of the remaining Participating Associations (as defined in the Final Accounting), as required by and consistent with Ind. Code 27-9-3-32 and after review and approval of the Court. See Final Accounting Sections 11-15. The Liquidator recommends that the Participating Associations also share in the final distribution of Benicorp’s remaining assets, as set forth in Section 27 below.

13) The vast majority of valid policyholder claims against Benicorp were reviewed, adjudicated and funded by the Affected Associations as set forth above. It was, however, determined that three former policyholders of Benicorp had valid claims which, for each individual, exceeded the maximum statutory coverage provided by the Affected Association in their respective states (collectively the “Uncovered Claims”). The Uncovered Claims were recommended for approval as Class 2 claims in the Liquidator’s Third Accounting. By Order dated July 3, 2012, the Court approved the Uncovered Claims in the total amount of \$43,401.76 and authorized and directed the Liquidator to make a 40% partial distribution thereon. The Liquidator has, therefore, previously disbursed a total of \$17,360.70 on the Uncovered claims. See Final Accounting Sections 11 and 48. The Liquidator recommends that the Uncovered Claims also share in the final distribution of Benicorp remaining assets, as set forth in Section 26 below.

14) Promptly after the Order of Liquidation was entered, the Liquidator also provided broad notice to those parties having an interest in Benicorp, consistent with Ind. Code 27-9-3-10 and as directed by Court Order. The notice advised all such parties that to the extent they had any

claim against Benicorp, they had the right to prepare and submit to the Liquidator a Proof of Claim on or before the Court approved Bar Date, as also specifically identified in all the notices. The Bar Date has now long passed and the Liquidator reports that it received a total of 1,836 Proofs of Claim. All of the Proofs of Claim received by the Liquidator have been reviewed and adjudicated, as described in detail in Article IV of the Final Accounting and as summarized below:

- (A) For each Proof of Claim received, the Liquidator initially made a determination as to the distribution priority Class (as set forth in Ind. Code 27-9-3-40) to which each Proof of Claim should be assigned.
- (B) Since the Benicorp estate does not have sufficient assets to fully pay all valid Class 2 claims, for each Proof of Claim assigned to Class 3 or lower the Liquidator made a determination as to the appropriate Class to which the Proof of Claim should be assigned, but did not expend the time and cost to determine the validity of such claims.
- (C) For Proofs of Claim assigned to Class 3 or lower, the Liquidator, in accordance with Ind. Code 27-9-3-37, sent to each such claimant a written notice of the Class determination, which notice also advised that the claimant had sixty (60) days to object or the Liquidator's determination would be final.
- (D) For Proofs of Claim that the Liquidator determined fell in Class 1 or Class 2, the Liquidator not only determined the appropriate Class to which each Proof of Claim should be assigned, but also the validity of each claim.
- (E) For all Class 1 and Class 2 Claims, the Liquidator again sent a written claim determination notice to each of the claimants, in accordance with Ind. Code 27-9-3-37, indicating the Class to which such Proof of Claim was assigned, the Liquidator's determination as to whether each claim should be approved, approved in part, or denied and advised that each claimant had sixty (60) days to object or the Liquidator's determination would be final.

15) The vast majority of the individuals and/or entities who filed Proofs of Claim did not object following receipt of the Liquidator's claim determination notices. To the extent objections were raised, those disputes were resolved through discussion, litigation and ultimately settlement. See Final Accounting Sections 42, 51, 52.

16) The Liquidator is required by Ind. Code 27-9-3-41 to report to the Court on all Proofs of Claims received and the Liquidator's determination on how each Proof of Claim should be resolved, for the Court's ultimate review and approval. In the Liquidator's Petition to Approve and Pay Certain Claims (filed on March 17, 2010) and in the Liquidator's Third Accounting (filed May 29, 2012), the Liquidator submitted its report to the Court on 1,831 of the 1836 total Proofs of Claim that had been received. By Orders dated April 29, 2010 and July 3, 2012, the Court approved the Liquidator's determination for all 1,831 of these Proofs of Claim. Those Orders were entered as Final Judgments, consistent with Indiana Trial Rule 54(B), and no Motion to Reconsider or Notice of Appeal was filed.

17) Accordingly, there are only five (5) Proofs of Claim that have not previously been reviewed and approved by the Court consistent with Ind. Code 27-9-3-41. These five (5) Proofs of Claim are listed and described in Section 50 of the Final Accounting, including the Liquidator's determination thereon, and can be summarized as follows:

- (A) Proofs of Claims 20080616080421 and 20080616144137 – These are updated Omnibus Proofs of Claim filed by NOLHGA on behalf of the Affected Associations. These provided notice of additional claims beyond the initial Omnibus Proof of Claim submitted by NOLHGA, which was previously reviewed and recommended by the Liquidator and approved by the Court. As described in detail in Sections 35 through and including Section 45 of the Final Accounting, the Liquidator makes the following recommendations with respect to the updated Omnibus Proofs of Claim:
 - (1) The total Class 1 claims of the Affected Associations should be approved in the amount of \$1,866,232;
 - (2) Given the Class 1 claims of the Affected Associations that have already been approved by the Court and paid by the Benicorp estate, and considering the State Deposits which were collected by certain of the Affected Associations, the Liquidator recommends, as part of the final distribution of Benicorp's remaining assets, that \$50,923 be paid to NOLHGA as the final Class 1 claims of the Affected Associations;

- (3) The total Class 2 claims of the Affected Association should be approved in the amount of \$51,412,703; and
- (4) After payment of all final Class 1 claims (as recommended in paragraphs 21 through and including 24 below) all then remaining Benicorp assets held by the Liquidator should be distributed to all approved Class 2 claimants on a pro-rata basis (consistent with Benicorp's final Class 2 asset-to-liability ratio as described in Section 25 below), so that all Class 2 claimants, both Covered Claims and Uncovered Claims, are treated alike and receive the same payment percentage from Benicorp assets, considering both payments previously made and the final distribution.

The Liquidator sent a written claim determination notice to NOLHGA, consistent with Ind. Code 27-9-3-37, describing all of the Liquidator's determinations set forth above and advising that the Affected Associations had sixty (60) days to object or the determinations would be final. No objections were asserted within the 60-day period, nor have any other questions or concerns been raised by NOLHGA or any of the Affected Associations.

- (B) Proof of Claim 20080512115350 – Submitted by the Michigan Life and Health Insurance Guaranty Association ("MLHIGA"). Liquidator sent a claim determination notice to MLHIGA, indicating that the Proof of Claim should be denied since Benicorp was not licensed to do business in the State of Michigan and, therefore, MLHIGA did not have any obligations as a result of Benicorp's insolvency. MLHIGA did not assert any objection to the claim determination notice within sixty (60) days of receipt, nor have any other questions or concerns been raised by MLHIGA.
- (C) Proof of Claim 20080516074306 – Submitted by the Utah Life and Health Insurance Guaranty Association ("ULHIGA"). The Liquidator sent a claim determination notice to ULHIGA indicating that the Proof of Claim should be denied since the Class 1 and Class 2 claims of ULHIGA were included in, and would be considered as part of, the Omnibus Proofs of Claim submitted by NOLHGA, making Proof of Claim 20080516074306 a duplicative claim. ULHIGA did not assert any objection to the claim determination notice within sixty (60) days of receipt, nor have any other questions or concerns been raised by ULHIGA.
- (D) Proof of Claim 20080527080505 – Submitted by the South Carolina Life & Accident & Health Insurance Guaranty Association ("SCLAHIGA"). The Liquidator sent a claim determination notice to SCLAHIGA indicating that all its Class 1 and Class 2 claims have been satisfied out of the State Deposit in South Carolina and, therefore, its Proof of Claim should be denied. SCLAHIGA did not assert any objection to the claim determination notice

within sixty (60) days of receipt, nor have any other questions or concerns been raised by SCLAHIGA.

18) By implementing and completing all of the procedures described above, the policy obligations of Benicorp and all Proofs of Claim filed against the Benicorp estate have been reviewed and evaluated. This has included both the identification and discharge of the obligations of the Affected Associations and the Liquidator's review and determination of all Proofs of Claim received. As required by Ind. Code 29-9-3-37, claim determination notices were sent on all Proofs of Claim, including advising claimants that they had sixty (60) days to object if they disagreed with the Liquidator's determination. To the extent objections were raised they have been resolved. Moreover, the Court has already reviewed and approved, by Final Judgments, the Liquidator's determination on all Proofs of Claim, except for the five (5) listed in paragraph 17. As to the remaining five (5) Proofs of Claim, the Liquidator previously sent a claim determination notice to each of the claimants and no objections were raised. There are no further claims against Benicorp to be reviewed or adjudicated and, therefore, the Benicorp estate is ready to be closed.

19) As described in Article III of the Final Accounting, the Liquidator has also now identified and recovered all available assets of the Benicorp estate and, therefore, the Benicorp estate is ready to be closed.

20) Given all of the above, the only additional information necessary to close the estate is limited to the following:

- (A) Identification of the final administrative costs and expenses which will be incurred by or on behalf of the Liquidator to close the estate and which should be approved for payment as Class 1 claims under Ind. Code 27-9-3-40 (beyond the final Class 1 claims of the Affected Associations), including the basis for such payments; and
- (B) Confirmation of Benicorp's asset-to-liability ratio applicable to approved Class 2 claims, so that final distribution of Benicorp's remaining assets are made in a manner that all approved Class 2 claims are treated alike.

Class 1 Claims

21) As set forth in paragraph 17(A)(1) and (2) above, the Liquidator recommends that the Court approve: (i) NOLHGA'S updated Omnibus Claims, including approval of Class 1 claims of the Affected Associations and NOLHGA in total the amount of \$1,866,232; and (ii) that a final Class 1 payment be made to NOLHGA for the benefit of the Participating Associations, in the amount of \$50,923. This payment, in conjunction with the Class 1 payments previously approved by the Court and paid to NOLHGA for the benefit of the Participating Associations, and the recovery of State Deposits by certain of the Affected Associations, will discharge all Class 1 obligations which the Benicorp estate owes to the Affected Associations and NOLHGA.

22) In accordance with the Indiana Insolvency Act and consistent with prior orders of this Court, the Liquidator over the course of the liquidation proceeding has paid out of the assets of the Benicorp estate, as Class 1 claims, the costs and expenses necessarily incurred to administer the estate. See Final Accounting Article II.

23) The remaining Class 1 administrative costs and expenses that will be incurred by the Liquidator, Special Deputy or those operating under their direction and control during and after the Court's consideration of the Final Accounting, including implementing the recommended procedure for closing the estate, are listed below and supported by the Affidavit of Michael P. Dinius, Special Deputy Liquidator, attached hereto as Exhibit B:

- (A) \$133,729.06 - Costs to securely store all records of Benicorp which are in the possession of the Liquidator, Special Deputy or those operating under their direction or control until February 28, 2022 and to thereafter destroy all such records consistent with Ind. Code 27-9-3-46 and the Liquidator's recommendation in paragraph 33 below. See Dinius Affidavit paragraph 6A.
- (B) \$3,000.00 - Cost to prepare and file final tax returns for Benicorp with the Internal Revenue Service and the Indiana Department of Revenue, to

confirm that the estate is being closed and that no tax obligations are owed. See Dinius Affidavit paragraph 6C.

- (C) \$5,000.00 - Costs and expenses to be incurred by Dentons Bingham Greenebaum LLP, counsel to the Liquidator, during close out of the estate, including: review of the Final Judgment when issued; review and confirmation of whether any Motion to Correct Errors or Notice of Appeal is filed following the Final Judgment; preparation and filing of Certificates of Compliance as recommended in the Final Accounting; and otherwise assisting the Liquidator and Special Deputy with close out of the estate; and
- (D) \$4,825.00 - Costs and expenses to be incurred by the Liquidator, Special Deputy Liquidator and other personnel and advisors operating under their direction and control during close out of the estate, including: providing notice of the Final Accounting, Petition and close out of the estate; making the final distribution of Benicorp's assets; assisting with the preparation of final tax returns; arranging for storage and destruction of Benicorp's records; and otherwise administering the close out of the Benicorp estate.

24) The Liquidator recommends that the Court approve the final Class 1 administrative costs and expenses listed in paragraph 23 above and authorize and direct Liquidator to pay such expenses out of the remaining assets of the Benicorp estate. If any objections are filed to the Final Accounting, this Petition or the closing of the estate, if the Court determines that it is necessary or appropriate to schedule a hearing thereon, or if there are other developments not currently contemplated by the Liquidator's recommendations set forth herein and, therefore, not included in the anticipated final Class 1 Claims listed above, the Liquidator reserves the right to amend this Petition to also seek payment of such additional Class 1 claims.

Class 2 Claims

25) After payment to NOLHGA of the final Class 1 claims of the Affected Associations (as set forth in Section 21) and payment of the final Class 1 administrative cost and expenses of the Liquidator (as set forth in Sections 23 and 24), the Liquidator recommends that all assets which then remain in the Benicorp estate be distributed on the approved Class 2 claims, including both the Covered Claims and the Uncovered Claims. Since Benicorp's assets are not sufficient to pay

all approved Class 2 claims in their entirety, the Liquidator recommends that final distribution on the Covered Claims and the Uncovered Claims be made on a pro-rata basis, consistent with Benicorp's final asset-to-liability ratio available for payment of Class 2 claims. In determining Benicorp's final asset to liability ratio for Class 2 claims, the Liquidator has considered the prior payment of early access distributions to the Participating Associations, the recovery of State Deposits by certain Affected Associations and the 40% partial payment previously made on the Uncovered Claims. As confirmed in paragraphs 9 through and including 11 of the Dinius Affidavit attached hereto as Exhibit B, Benicorp's final Class 2 asset-to-liability ratio is 47.69297%.

26) It is, therefore, recommended that the Court authorize and direct the Liquidator, as part of the final distribution, to make additional payments on the Uncovered Claims, so that the total of all payments by the Liquidator (both of those previously made and the final distribution) will equal 47.69297% of the approved amount of the Uncovered Claims.

27) Once final distribution has been made on the Uncovered Claims as set forth in paragraph 26, it is recommended that all then remaining Benicorp assets should be immediately paid and delivered to NOLHGA, for the benefit of the Participating Associations. Upon receipt of such assets, NOLHGA should be directed to allocate and disperse such amount to the Participating Associations, recognizing that certain Affected Associations satisfied their Class 2 claims, in whole or in part, out of State Deposits. See Final Accounting Section 44.

28) By following the recommended procedures for final distribution set forth in Sections 26 and 27 above, all assets of the Benicorp estate available for approved Class 2 claims will have been distributed consistent with the requirements of Ind. Code 27-9-3-40 and 27-9-4-9(b).

29) Given the information included in the Final Accounting, this Petition, and as supported by the information in the Dinius Affidavit, no further evidence or information is required for the Court to consider the Final Accounting and make its ruling thereon. The Liquidator, therefore, respectfully requests that after directing the Liquidator to provide notice as recommended in paragraph 31 below, the Court consider and approve the Final Accounting, and this Petition, including authorizing closure of the Benicorp estate in accordance with the updated recommendations set forth below.

C. UPDATED RECOMMENDATIONS FOR CLOSING THE ESTATE

30) In light of the current pandemic and considering all the information and evidence contained in the Final Accounting, this Petition and the Dinius Affidavit, the Liquidator now recommends that a hearing is not required, unless: (i) the Court, on its own motion, believes such a hearing is necessary; or (ii) a third-party having an interest in the final distribution of assets and close out of the estate files a timely request for hearing and the Court, after consideration, determines that the request has merit and schedules a hearing.

31) Before the Court undertakes its consideration of and rules on the Final Accounting and this Petition, it is recommended that the Liquidator first be authorized and directed, by the Court's issuance of an Order in the form attached here to as Exhibit C, to provide notice of the Final Accounting, this Petition and Liquidator's recommendations for closing the estate. The form and extent of the notice recommended by the Liquidator includes all of the following, to be accomplished within fifteen (15) days of the Court's Order authorizing and directing such notice:

- (A) Liquidator to mail (by U.S. First Class mail, postage prepaid) the form of Notice attached hereto as Exhibit D addressed to the following:
 - (1) The three individuals previously insured by Benicorp who have approved Class 2 Uncovered Claims;

- (2) The twenty-eight Affected Associations and the National Organization of Life and Health Insurance Guaranty Associations;
 - (3) Policyholders of Benicorp, whose policies were in effect as of the date the Order of Liquidation was entered;
 - (4) The Insurance Commissioners or Departments in each state or jurisdiction and the National Association of Insurance Commissioners;
 - (5) The Indiana Secretary of State;
 - (6) The Indiana Attorney General;
 - (7) The Indiana Department of Revenue;
 - (8) The Marion County Auditor;
 - (9) The Internal Revenue Service, both at its national and local offices;
 - (10) The United States Attorney for the Southern District of Indiana;
 - (11) The United States Department of Justice; and
 - (12) All who have a current appearance on file in this proceeding.
- (B) Liquidator to publish the form of the Notice attached hereto as Exhibit D in a newspaper of general circulation in Marion County, Indiana.
- (C) Liquidator to arrange for the following to be posted on the website of the Indiana Department of Insurance:
- The form of Notice attached hereto as Exhibit D;
 - A copy of the Final Accounting;
 - A copy of this Petition; and
 - A copy of the Court's Order directing Notice and Setting the deadline for Objections.

32) The Liquidator further recommends that the Court's Order authorizing and directing the Liquidator to provide notice, should also require that if any person wishes to object to the Final Accounting, this Petition or to any other matter relating to the closing of the Benicorp

estate, that person must, within thirty (30) days of the notice date, file with the Court and serve upon Liquidator's counsel a request for hearing. The Court's Order should also require that if a request for hearing is filed, it must include a detailed description of the objection being raised and identify the facts, argument and/or law which support such objection.

33) It is also recommended that the Court direct the Liquidator to file a Certificate of Compliance, confirming that notice was timely and properly provided as directed by the Court. If no objection and request for hearing is filed within thirty (30) days after the notice date, the Certificate of Compliance may also request that the Court then proceed with its consideration of the Final Accounting and this Petition, without hearing.

34) Once the Court has completed its review of the Final Accounting and this Petition, it is recommended that a Final Judgment be issued, in the form attached hereto as Exhibit E, which: (i) approves in all respects the Final Accounting and this Petition; (ii) directs the Liquidator to take all actions necessary to close the estate, including but not limited to, final distribution of Benicorp's assets, storing of Benicorp's records until February 28, 2022 and, thereafter, destroying all such records, and filing final tax returns for Benicorp; (iii) dissolves the corporate existence of Benicorp and; (iv) once the Liquidator has complied with all requirements of the Final Judgment, discharges and releases the Liquidator, the Special Deputy and those who served under their direction and control, from all further obligations and/or claims related to Benicorp or its liquidation proceeding. It is recommended that the Liquidator not proceed with the Final Distribution of either Class 1 or Class 2 claims, until thirty (30) days after entry of the Final Judgment, to confirm that no Motion to Correct Errors or Notice of Appeal is filed.

35) After Final Judgment has been entered, no Motion to Correct Errors or Notice of Appeal has been timely filed, and all remaining assets of Benicorp have been disbursed, it is

recommended that the Liquidator be directed to file with the Court a Final Certificate of Compliance, confirming that all directives to close the estate as set forth in the Final Judgment have been implemented, at which time this liquidation proceeding should be terminated and dismissed from the Court's active docket, without the need for further filings or requests.

WHEREFORE, the Liquidator respectfully requests that:

- (A) The Court enter an Order in the form attached hereto as Exhibit C, which:
 - (i) authorizes and directs the Liquidator to provide Notice of the Final Accounting, this Petition and the Liquidator's recommendation to close the estate;
 - (ii) requires any person who wishes to object to the Final Accounting, this Petition or the closing of the estate to file with the Court and serve upon Liquidator's counsel, no later than thirty (30) days after the notice date, a request for hearing which includes a detailed description of that party's objection and identifies the facts, argument and law which support of the objection; and
 - (iii) directs the Liquidator to file with the Court a Certificate of Compliance, confirming that the required notice was properly and timely provided by the Liquidator;
- (B) If any objection and request for hearing is timely filed, it is requested that the Court then determine whether it is necessary and appropriate to schedule a hearing thereon;
- (C) After considering the Final Accounting, this Petition and objections timely filed by third parties, if any, it is requested that the Court enter a Final Judgment, in the form attached hereto as Exhibit E, approving the Final Accounting, this Petition and closing of the Benicorp estate, all as recommended by the Liquidator;
- (D) It is requested that the Court direct the Liquidator, once the remaining assets of the Benicorp estate have been disbursed in accordance with the Final Judgment, to file a Final Certificate of Compliance and, upon receipt of such Final Certificate of Compliance, this proceeding should be terminated and dismissed from the Court's active docket; and
- (E) The Court enter any further relief it deems necessary and appropriate given the circumstances.

Respectfully submitted,

/s/ Donald J. Graham

Donald J. Graham, #8005-49

Attorney for Liquidator

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing has been served on the following parties electronically by using the Court's IEFIS System and U.S. Mail, first class postage prepaid, this 22nd day of February, 2021, addressed to the following:

Andrew W. Hull

HOOVER AND HULL

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Osage Beach, MO 65065

/s/ Donald J. Graham

EXHIBIT A

RELEASE AGREEMENT

This Release Agreement is being entered into by the United States, Indiana Insurance Commissioner Stephen W. Robertson, who serves as Liquidator (“Liquidator”) of Benicorp Insurance Company (“Benicorp”) and Michael P. Dinius, who serves as Special Deputy Liquidator (“Special Deputy”) of Benicorp.

I. PARTIES

The parties to this Release Agreement are the United States, the Liquidator and the Special Deputy (collectively, the “Parties”).

II. RECITALS

1. The Parties do not intend this Release Agreement to release any possible claims the United States may have or may acquire against anyone for tax, fraud (including, but not limited to, securities and pension benefit fraud), criminal liabilities, or reimbursement liabilities and penalties arising under 42 U.S.C. § 1395y(b), or any liability under 31 U.S.C. § 3713(b) arising from such claims.

2. Except for the express terms of this Release Agreement, the Parties do not intend to create, enhance, diminish, defeat or otherwise affect such claims, if any, as the United States may have against the Liquidator, the Special Deputy or the Benicorp estate.

3. The Parties understand that this Release Agreement may be subject to the approval of the Marion County Indiana Circuit Court (“Court”), which is supervising the liquidation of Benicorp.

4. The United States enters into this Release Agreement in reliance upon the information contained in the affidavit dated January 30, 2018, executed by the Special Deputy of Benicorp, attached as Exhibit A to this Release Agreement (“Affidavit”).

III. AGREEMENT

1. Subject to the exclusions in the immediately following paragraph, the United States hereby releases and discharges the Liquidator, the Special Deputy and the Benicorp estate from any and all liability under 31 U.S.C. § 3713(b) in connection with the Benicorp liquidation.

2. Notwithstanding any other provision to this Release Agreement, the United States does not release the Liquidator, the Special Deputy and the Benicorp estate for:

- (a) any claim arising under any criminal law or any liability under 31 U.S.C. § 3713(b) arising from any such claim;
- (b) any criminal, civil, or administrative claim, right or defense arising under Title 26, U.S. Code (Internal Revenue Code) or any liability under 31 U.S.C. § 3713(b) arising from any such claim;
- (c) any claim or action arising under 31 U.S.C. § 3729 *et seq.* (False Claims Act), 31 U.S.C. § 3801 *et seq.* (Program Frauds Civil Remedies Act), 42 U.S.C. § 1320a-7a (Civil Monetary Penalties statute), 29 U.S.C. Ch. 18 (Employee Retirement Income Security Program), 42 U.S.C. ch. 7 (The Social Security Act of 1935), or 42 U.S.C. § 1395y(b) (Medicare as Secondary Payer), or any liability under 31 U.S.C. § 3713(b) arising from any such claim;
- (d) any claim arising under any other statute or common law principle governing pension benefit, fraudulent conveyance or any other form of fraud, or any liability under 31 U.S.C. § 3713(b) arising from any such claim;
- (e) any obligation created by this Release Agreement.

3. Under the terms of this Release Agreement, the United States or its duly authorized representative shall have the right, prior to the destruction of Benicorp's records in accordance with the orders of the Court, during normal business hours, on a date and at a

location agreed upon by the Parties, to inspect, and if it wishes, to copy at its own expense, such documents, books, and records of the estate, and of the Liquidator or the Special Deputy, as shall be reasonably necessary to determine the existence and amount of claims the United States may have against the Benicorp estate, or to determine Benicorp's compliance with the terms of this Release Agreement. No documents, books, or records of the estate, the Liquidator or the Special Deputy may be destroyed unless notice is given to the United States of any motion filed with the Court requesting approval of such destruction. If the Liquidator does not request approval from the Court, he or she must obtain prior written authorization from the United States before destruction of any documents, books, or records of the estate, the Liquidator or the Special Deputy.

4. Except for the express undertakings of the Liquidator, the Special Deputy and the United States in this Release Agreement, nothing in this Release Agreement shall be construed:

(a) to establish or perfect any claims, substantive rights, or procedural rights of the United States;

(b) to limit, restrict, diminish, or defeat any claims, substantive rights, or procedural rights of the United States;

(c) to establish or perfect any objections or defenses, substantive rights, or procedural rights of the Liquidator or the Special Deputy; or

(d) to limit, restrict, diminish, or defeat any defenses, substantive rights, or procedural rights of the Liquidator or the Special Deputy.

5. The Parties agree that this Release Agreement shall not be effective unless and until it is approved by the Court, if approval is required, and the time for appeals of any such approval has expired. The Parties further agree to cooperate with each other in seeking prompt

approval of this Release Agreement from the Court, including, but not limited to, making the necessary witnesses available for testimony considered necessary or appropriate to provide the Court with an adequate record upon which to approve this Release Agreement.

6. The Parties may enter into this Release Agreement by exchanging signature pages by transmission of facsimiles or by electronic mail of Adobe Acrobat files.

SHARON WILLIAMS Digitally signed by SHARON WILLIAMS
Date: 2020.09.25 07:08:27 -04'00'

By: Sharon C. Williams
Trial Attorney
Civil Division
Department of Justice
Attorney for the United States

Dated: 9/29/2020



By: Michael P. Dinius
Special Deputy Liquidator
Benicorp Insurance Company,
in Liquidation, Individually and on
behalf of Stephen W. Robertson
Liquidator of Benicorp Insurance
Company, in Liquidation

EXHIBIT B

AFFIDAVIT OF MICHAEL P. DINIUS

I, Michael P. Dinius ("Affiant"), in my capacity as Special Deputy Liquidator of Benicorp Insurance Company ("Benicorp"), make the following statements under oath.

1) Consistent with Ind. Code 27-9-3-9(b)(1), Indiana Insurance Commissioner, Stephen W. Robertson, in his capacity as Liquidator of Benicorp ("Liquidator"), previously appointed Affiant as Special Deputy Liquidator of Benicorp ("Special Deputy") and Affiant continues to serve in that position. Subject to review and oversight of the Liquidator and the Marion Circuit Court ("Court"), the Affiant, as Special Deputy, administers and manages the liquidation of Benicorp, including directing and managing certain personnel and advisors who assist in the administration of the Benicorp liquidation, and Affiant has access to the books, documents and financial records of Benicorp. The statements contained in this Affidavit are based upon knowledge and information personally known to the Affiant or supplied to me by others who work under my direction and control and upon whom I rely in my capacity as Special Deputy Liquidator.

2) Affiant has reviewed the Final Accounting and Recommendations as to Conditions and Procedures for closing the Estate ("Final Accounting") filed with the Court on May 22, 2017. Affiant has also reviewed the Notice of Federal Release, Petition for Court to Consider Final Accounting and Updated Recommendations for Closing the Estate ("Petition"), which is now being filed with the Court and to which this Affidavit is attached in support as Exhibit B.

3) The Final Accounting and Petition provide a correct and complete report as to the status of the Benicorp liquidation proceeding. As supported by the information set forth in this Affidavit, the Final Accounting and Petition demonstrate that the liquidation of Benicorp has been completed in accordance with Ind. Code 27-9-3 and that the Benicorp estate should be closed, including final distribution of the remaining Benicorp assets still held under the direction and control of the Liquidator.

4) Should the Liquidation Court enter a Final Judgment directing that the Benicorp estate be closed, as recommended in the Final Accounting and Petition, the remaining assets of the Benicorp estate still held under the direction and control of the Liquidator should be disbursed as recommended in the Final Accounting and Petition and as confirmed in this Affidavit.

5) As described in paragraph 38 of the Final Accounting and paragraph 21 of the Petition, a payment of \$50,923.00 should be made in discharge of the final approved Class 1 claims incurred by or on behalf of the "Affected Associations" (as defined in the Final Accounting and the Petition). This final payment should be made to the National Organization of Life and Health Insurance Guaranty Association ("NOLHGA"), who

should be directed to disburse such payment for the benefit of the Participating Associations (as defined in the Final Accounting and Petition), consistent with the recommendations in paragraph 38 of the Final Accounting.

6) Pursuant to Ind. Code 27-9-3-9, prior Orders of the Court and as described in paragraphs 16 through 20 of the Final Accounting and paragraph 22 of the Petition, costs and expenses incurred up to and including the date of this Affidavit by or on behalf of the Liquidator, the Special Deputy Liquidator and those operating under their direction and control to administer the liquidation of the Benicorp estate, have been paid or will be paid as Class 1 claims under Ind. Code 27-9-3-40 out of the assets of Benicorp. Affiant and those operating under his direction and control have now identified the categories of costs and expenses which will necessarily be incurred after the date of this Affidavit, including during the Court's consideration of the Final Accounting and Petition and to thereafter administer close-out of the Benicorp estate and, based upon solicitations of proposals, quotations and other due diligence, have determined the reasonable amount of such remaining Class 1 claims, all as listed and recommended by the Affiant below:

- A) \$133,729.06 - Cost of a third party vendor to securely store all records of Benicorp now in the possession of the Liquidator, Special Deputy and those operating under their direction and control until February 28, 2022, and to, thereafter, securely destroy all such records as recommended in paragraph 34 of the Petition and consistent with Ind. Code 27-9-3-46;
- B) \$3,000.00 - Costs to prepare and file final tax returns for Benicorp with the Internal Revenue Service and the Indiana Department of Revenue, to confirm that the estate is being closed and that no tax obligations are owed;
- C) \$5,000.00 - Costs to cover the reasonable time and expenses to be incurred by Dentons Bingham Greenebaum LLP, counsel to the Liquidator, during close out of the estate, including: review of the Final Judgment when issued; review and confirmation of whether any Motion to Correct Error or Notice of Appeal is filed following the Final Judgment; preparation and filing of Certificates of Compliance as recommended in the Final Accounting and Petition; and otherwise assisting the Liquidator and Special Deputy with close out of the estate; and
- D) \$4,825.00 - Costs to cover the reasonable time and expenses to be incurred by the Affiant (as Special Deputy Liquidator) and other personnel and advisors operating under his direction and control during close out of the estate, including: providing notice of the Final Accounting, Petition and close out of the estate; making the

final distribution of Benicorp's assets; assisting with the preparation of the final tax returns; arranging for the storage and destruction of Benicorp's records; and otherwise administering the close out of the Benicorp estate.

7) Affiant submits that all of the costs and expenses listed and described in paragraph 6 above are reasonable and necessary administrative matters to be performed by or on behalf of the Liquidator during the Court's consideration of the Final Accounting and the Petition and to, thereafter, close the estate should the Court enter a Final Judgment as recommended by the Liquidator. Affiant recommends that they be approved by the Court and paid from Benicorp's assets as the final Class 1 costs and expenses of the Liquidator, the Special Deputy and those operating under their direction and control, to administer close out of the Benicorp estate.

8) Benicorp does not have sufficient assets to pay, in full, all approved Class 2 claims under Ind. Code 27-9-3-40. Accordingly, no funds are available for payment of any claims which fall within Class 3 or lower and only partial payment will be made on all approved Class 2 claims, consistent with Benicorp's Class 2 asset-to-liability ratio as calculated and defined in paragraphs 9, 10 and 11 below.

9) The total of Benicorp assets that have already been paid on Class 2 claims or are now available for payment of Class 2 claims are as follows:

Early Access Distributions previously paid to the Participating Associations pursuant to Ind. Code 27-9-3-32 and prior Orders of the Court	\$21,528,795.00
Partial Payments previously made on the Uncovered Claims as approved and authorized by the Court	\$17,360.70
Total of State Deposits (as defined in the Final Accounting and Petition) that were available for Class 2 claims	\$766,778.00
Total of Benicorp assets which will remain after payment of Final Class 1 claims (as described in paragraphs 5, 6 and 7 of this Affidavit)	<u>\$2,228,011.68</u>
Total of Benicorp Assets available for payment of approved Class 2 claims	\$24,540,945.38

10) The total of all valid Class 2 claims against the Benicorp estate, including those already approved by the Court and the final Class 2 claims recommended by the Liquidator in the Final Accounting and Petition, are as follows:

Covered claims (as defined in the Final Accounting and Petition)	\$51,412,703.00
Uncovered claims (as defined in the Final Accounting and Petition)	<u>\$43,401.76</u>
Total Class 2 Claims	\$51,456,104.76

11) Based on the information set forth and confirmed in paragraphs 9 and 10 above, Benicorp's Class 2 asset to liability ratio is:

$$\frac{\$24,540,945.38}{\$51,456,104.76} = 47.69297\%$$

12) As recommended in paragraph 49 of the Final Accounting and paragraph 26 of the Petition, the Liquidator should be authorized and directed to make an additional partial payment on the Uncovered Claims, so that the total of all payments (both those previously made and the final distribution) will equal 47.69297% of the approved amount of the Uncovered Claims. Once such final distribution has been made on the Uncovered Claims, all assets which then remain in the Benicorp estate should be immediately paid and delivered to NOLHGA for the benefit of the Participating Associations, as set forth and recommended in paragraph 44 of the Final Accounting.

The information contained in this affidavit is accurate and complete to the best of my knowledge.



Michael P. Dinius
Special Deputy Liquidator
Benicorp Insurance Company

STATE OF NORTH CAROLINA)
) SS:
COUNTY OF WAKE)

Michael P. Dinius, Special Deputy Liquidator of Benicorp Insurance Company, personally appeared before me and subscribed the foregoing Affidavit as of this 11th day of February, 2021.

My Commission Expires:

June 21, 2024

Signature: Angela R. Williams

Printed: Angela R. Williams

Notary Public

Residing in Wake County, North Carolina

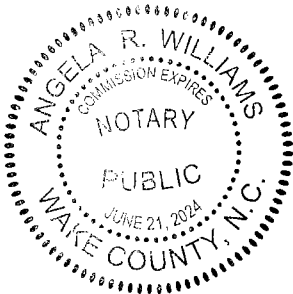


EXHIBIT C

STATE OF INDIANA)
) SS:
COUNTY OF MARION) CAUSE NO. 49C01-0707-MI-029122

STEPHEN W. ROBERTSON, as the Insurance)
Commissioner of the Department of)
Insurance of the State of Indiana,)
)
 Petitioner,)
)
 v.)
)
BENICORP INSURANCE COMPANY,)
)
 Respondent.)

**ORDER AS TO THE FORM AND EXTENT OF NOTICE
TO BE PROVIDED REGARDING FINAL ACCOUNTING
AND DEADLINE FOR FILING OBJECTIONS THERETO**

On May 22, 2017, the Liquidator filed a Final Accounting and Recommendations as to Conditions and Procedures for Closing the Estate (“Final Accounting”) and on February 22, 2021, filed a Notice of Federal Release, Petition for Court to Consider Final Accounting and Updated Recommendations for Closing the Estate (“Petition”).

In anticipation of considering the Final Accounting and Petition, the COURT NOW ORDERS AND DIRECTS that:

1) The Liquidator, within fifteen (15) days of the date of this Order, provide notice of the Final Accounting, the Petition and the Liquidator’s recommendation to close the Benicorp estate, all as set forth below.

A) By depositing in the United States mail (First Class, postage prepaid) the form of the Notice attached to the Petition as Exhibit D, addressed to the following:

(1) The three individuals previously insured by Benicorp who have approved Class 2 Uncovered Claims;

- (2) The twenty-eight Affected Associations and the National Organization of Life and Health Insurance Guaranty Associations;
 - (3) Policyholders of Benicorp whose policies were in effect on the date the Order of Liquidation was entered;
 - (4) The Insurance Commissioner or Departments in each state or jurisdiction and the National Association of Insurance Commissioners;
 - (5) The Indiana Secretary of State;
 - (6) The Indiana Attorney General;
 - (7) The Indiana Department of Revenue;
 - (8) The Marion County Auditor;
 - (9) The Internal Revenue Service, both at its national and local offices;
 - (10) The United States Attorney for the Southern District of Indiana;
 - (11) The United States Department of Justice; and
 - (12) All who have a current appearance on file in this proceeding.
- B) By publishing the form of Notice attached to the Petition as Exhibit D, in a newspaper of general circulation in Marion County, Indiana; and
- C) By posting on the website of the Indiana Department of Insurance:
- (1) The form of Notice attached to the Petition as Exhibit D;
 - (2) A copy of the Final Accounting;
 - (3) A copy of the Petition; and
 - (4) A copy of this Order.

2) Any person or entity who wishes to object to the Final Accounting, to the Petition or to any other matter relating to closure of the Benicorp estate must, within thirty (30) days of the date of the Notice provided by the Liquidator as required above, file with the Court and serve upon the Liquidator's counsel a request for hearing. Any such request for hearing must include a detailed description of the objection being raised, including the facts, argument and law offered in support of the objection.

3) The Liquidator is also directed to file with the Court a Certificate of Compliance, confirming that notice was timely and properly provided as required by this Order. The Certificate of Compliance should also advise the Court if any objection or request for hearing was filed within the thirty (30) day period following the notice provided by the Liquidator.

Dated: _____

JUDGE, Marion County Circuit Court

Distribution:

Donald J. Graham
DENTONS BINGHAM GREENEBAUM LLP
2700 Market Tower
10 West Market Street
Indianapolis, IN 46204-4900

Andrew W. Hull
HOOVER AND HULL
111 Monument Circle, Suite 4400
Indianapolis, IN 46244-0989

David G. Blachly
David J. Tipton
DENSBOEN BLACHLY LLP
500 East 96th Street, Suite 100
Indianapolis, IN 46240

Joel A. Glover
FAEGRE DRINKER BIDDLE & REATH LLP
1144 15th Street, Suite 3400
Denver, CO 80202

Jamie C. Woods
THORNE GRODNIK, LLP
420 Lincolnway West
Mishawaka, Indiana 46546

Eric L. Scherling
COZEN O'CONNOR
1900 Market Street
Philadelphia, PA 19103

Mr. Samuel Trapp
P.O. Box 1680
Osage Beach, MO 65065

EXHIBIT D

STATE OF INDIANA)
) SS:
COUNTY OF MARION) CAUSE NO. 49C01-0707-MI-029122

STEPHEN W. ROBERTSON, as the Insurance)
Commissioner of the Department of)
Insurance of the State of Indiana,)
)
 Petitioner,)
)
)
 v.)
)
BENICORP INSURANCE COMPANY,)
)
)
 Respondent.)

**NOTICE OF LIQUIDATOR'S FINAL ACCOUNTING
AND PETITION TO CLOSE THE BENICORP ESTATE**

Benicorp Insurance Company ("Benicorp") was a life and health insurance company domiciled in the state of Indiana. On October 7, 2007, following a hearing in open Court and presentation of evidence, the Circuit Court of Marion County, Indiana ("Liquidation Court") entered an Order of Liquidation against Benicorp in accordance with the Indiana Insurance Insolvency Act (Ind. Code 27-9-3). The Order of Liquidation specifically found that Benicorp was insolvent, appointed the Indiana Insurance Commissioner as Liquidator of Benicorp and directed that the company be liquidated in accordance with the procedures set forth in Ind. Code 27-9-3 and under the general supervision of the Liquidation Court.

The Liquidator has now filed with the Liquidation Court a Final Accounting and Recommendations as to the Conditions and Procedures for closing the estate ("Final Accounting") and a Notice of Federal Release, Petition for Court to Consider Final Accounting and Updated Recommendations for Closing the Estate ("Petition"). Copies of both the Final Accounting and the Petition can be found on the Indiana Department of Insurance website – www.in.gov/idoi.

As explained in the Final Accounting and Petition, all claims against Benicorp have been reviewed and adjudicated. The vast majority of the valid and outstanding claims arising out of insurance policies issued by Benicorp, were funded and paid by the State Life and Health Insurance Guaranty Associations in the states in which Benicorp was licensed to do business ("Affected Associations"). Pursuant to Ind. Code 27-9-3-40, the Affected Associations have Class 2 claims against the Benicorp estate to the extent they funded and paid Benicorp policy obligations. The limited number of valid policy claims not funded and paid by the Affected Associations have also been approved by the Liquidation Court as Class 2 claims under Ind. Code 27-9-3-40.

The Liquidator also completed its review of all Proofs of Claims filed by individuals or entities against Benicorp. As to each Proof of Claim, a written notice was sent to the respective claimant, setting forth the Liquidator's determination as to the claim. Most claimants did not timely object to the Liquidator's determination as required by Ind. Code 27-9-3-37 and, therefore, the Liquidator's determination is final. To the extent objections were timely asserted, those have now all been finally resolved and approved by Order of the Liquidation Court.

The liquidation of Benicorp has been completed in accordance with all procedures and requirements of Ind. Code 27-9-3 and the Liquidator is recommending that the Benicorp estate be closed, including final distribution of Benicorp's assets. The Benicorp estate does not have sufficient assets to pay, in full, all approved Class 2 claims and therefore:

- No payment will be made on claims that fall within Class 3 or lower of Ind. Code 27-9-3-40; and
- Partial payments will be made on all approved Class 2 claims, so that all such claimants receive the same percentage of their approved Class 2 claims.

If you have an objection to the Final Accounting, the Petition or the recommended closing of the Benicorp estate, then you must file a Request for Hearing with the Liquidation Court, no later than thirty (30) days following the date of this Notice. You must also concurrently send a copy of the Request for Hearing to the Liquidator's counsel. The addresses for the Liquidation Court and the Liquidator's counsel are set forth below:

Marion Circuit Court
City-County Building
200 E. Washington Street
Room W-506
Indianapolis, IN 46204

Donald J. Graham
DENTONS BINGHAM GREENEBAUM LLP
2700 Market Tower
10 West Market Street
Indianapolis, IN 46204-4900

A Request for Hearing must set forth, in detail, the objection being raised, including the facts, argument and law offered in support of the objection. The requirement for timely filing a Request for Hearing in order to pursue an objection, is set forth in the Liquidation Court Order dated _____, 2021, a copy of which can also be found on the Indiana Department of Insurance website – www.in.gov/idoi.

THIS NOTICE IS ISSUED THIS ____ DAY OF _____, 2021.

Indiana Insurance Commissioner
Stephen W. Robertson,
as Liquidator of Benicorp Insurance Company

On May 22, 2017, Indiana Insurance Commissioner, Stephen W. Robertson, as Liquidator of Benicorp Insurance Company (“Benicorp”), filed a Final Accounting and Recommendations as to Conditions and Procedures for Closing the Estate (“Final Accounting”). The Court initially withheld its consideration of the Final Accounting while the Liquidator pursued a release from the United States Federal Government (“Federal Release”). On February 22, 2021, the Liquidator filed a Notice of Federal Release, Petition for Court to Consider Final Accounting and Updated Recommendations for Closing the Estate (“Petition”). As ordered by the Court and confirmed in a Certificate of Compliance (as filed with the Court), the Liquidator provided notice (by mailings, publication and website postings) of the Final Accounting, the Petition and the recommendation to close the estate.

Having considered the Final Accounting, the Petition, the Affidavit of Michael P. Dinius attached to the Petition as Exhibit B, and being fully advised, the Court hereby makes and enters the following findings:¹

- a) This Court has exclusive subject matter and personal jurisdiction, pursuant to Ind. Code 27-9-1-3(f) and 27-9-3-22, over all proceedings related to the liquidation of Benicorp and has summary jurisdiction to hear and determine the rights of any parties arising under Ind. Code 27-9-3;
- b) Notice of the Final Accounting, the Petition and the recommendation to close the estate was provided by the Liquidator (by mailings, publication and website postings as ordered by the Court) and such constitutes appropriate and sufficient notice and, considering the rights of interested parties, meets the requirements of due process;
- c) The Liquidator has pursued and recovered all assets and/or property of Benicorp;
- d) The Liquidator has identified, reviewed and processed all Proofs of Claim against the Benicorp estate, in accordance with Ind. Code 27-9 and Orders issued by this Court; and
- e) The Final Accounting, the Petition and all recommendations set forth therein, should be approved in all respects.

IT IS, THEREFORE, ORDERED, ADJUDGED and DECREED that:

1. The Final Accounting, the Petition and all recommendations contained therein, are approved and granted in all respects.

2. The Court approves the Liquidator's claim determination that each of the Proofs of Claim set forth below should be denied, for the reasons set forth in Section 50 of the Final Accounting:

- a) Proof of Claim submitted by Michigan Life and Health Insurance Guaranty Association (No. 20080512115350);
- b) Proof of Claim submitted by the Utah Life and Health Insurance Guaranty Association (No. 20080516074306); and

¹ Capitalized terms in this Final Judgment shall be as defined in the Final Accounting (unless otherwise expressly defined herein).

- c) Proof of Claim submitted by the South Carolina Life & Accident & Health Insurance Guaranty Association (No. 20080527080505).
- 3. With respect to Class 1 claims under Ind. Code 27-9-3-40:
 - a) The Court approves the Class 1 claims of the Affected Associations (as recommended in the Final Accounting) in the total amount of \$1,866,232 and the Court further finds and orders as follows:
 - (i) Taking into consideration – (i) the payments previously made by the Liquidator on the Class 1 claims of the Participating Associations (as set forth in Section 36 of the Final Accounting); and (ii) that certain Affected Associations recovered their Class 1 claims from State Deposits (as set forth in Section 37 of the Final Accounting) – the Liquidator is directed as part of the final distribution of Benicorp’s assets to pay \$50,923.00 to the National Organization of Life and Health Insurance Guaranty Associations (“NOLHGA”), as the final outstanding balance of the approved Class 1 claims of the Affected Associations; and
 - (ii) Upon receipt of this payment, NOLHGA is directed to appropriately allocate and disburse this amount in satisfaction of the remaining Class 1 claims of the Participating Associations.
 - b) The Court also approves all Class 1 claims for the costs and expense of administering the Benicorp estate which have been incurred by the Liquidator, Special Deputy Liquidator and persons and entities operating under their direction and control up to and including the filing of the Petition. The Liquidator is further authorized and directed to pay, as Class 1 claims under Ind. Code 27-9-3-40, the final costs and expenses of administration which have been or will be incurred by the Liquidator, Special Deputy Liquidator and persons and entities operating under their direction and control, as necessary to close out the Benicorp estate, as set forth in paragraph 6 of the Affidavit of Michael P. Dinius (attached to the Petition as Exhibit B) and consistent with this Final Judgment, including:
 - (i) \$133,729.06 - The costs to store and ultimately destroy (no sooner than February 28, 2022) all the records of Benicorp which are in the possession of the Liquidator or those operating under his direction or control;
 - (ii) \$3,000.00 - The costs to prepare and file final tax returns with the Internal Revenue Service and the Indiana Department of Revenue, confirming that the estate is being closed and that there are no tax obligations owed;

- (iii) \$5,000.00 - The costs and expenses of Dentons Bingham Greenebaum, LLP to provide assistance to the Liquidator and Special Deputy during close out of the estate including: review of the Final Judgment when issued; review and confirmation of whether any Motion to Correct Errors or Notice of Appeal is filed following the Final Judgment; preparation and filing of Certificates of Compliance as required by the Final Accounting; and otherwise assisting the Liquidator and Special Deputy with close out of the estate; and
- (iv) \$4,825.00 - The costs and expenses of the Liquidator, the Special Deputy Liquidator and those operating under their direction and control during close out of the estate; including: providing notice of the Final Accounting, Petition and close out of the estate; making final distribution of assets from the Benicorp estate; assisting with preparation of final tax returns for Benicorp; arranging for the records of Benicorp in the possession of the Liquidator, Special Deputy Liquidator and those operating under their direction and control to be securely stored until February 28, 2022 and, thereafter, to be securely destroyed; and otherwise administering close out of the estate as authorized and directed by this Final Judgment.

4. With respect to Class 2 claims under Ind. Code 27-9-3-40:

- a) Based on the Affidavit of Michael P. Dinius (attached to the Petition as Exhibit B) the Court finds and declares that the Class 2 asset to liability ratio of the Benicorp estate (after payment of all final Class 1 claims in accordance with Section 3 above), is 47.69297%.
- b) The Liquidator previously recommended and the Court previously approved Uncovered Claims in the total amount of \$43,401.76, with the Liquidator having already made a Court approved forty percent (40%) partial distribution on the Uncovered Claims in the total amount of \$17,360.70;
- c) The Liquidator is authorized and directed, as part of the distribution of Benicorp's assets, to make final partial payments on the Uncovered Claims in amounts which, when added to the partial payments previously made, will bring the total partial payments on the Uncovered Claims to 47.69297%;
- d) The Court now approves the Class 2 claims of the Affected Associations in the total amount of \$51,412,703, as recommended in the Final Accounting;

- e) After payment of the final Class 1 claims (as set forth in Section 3) and immediately following final distribution on the Uncovered Claims (as set forth in Section 4(c), the Liquidator is authorized and directed to disburse all remaining assets of the Benicorp estate then in the possession and control of the Liquidator, to NOLHGA, for the benefit of the Participating Associations with respect to their Class 2 claims;
- f) Upon receipt of this final distribution, NOLHGA shall appropriately allocate and disburse this amount to the Participating Associations, as set forth in paragraph 44 of the Final Accounting.

5. There are no Class 2 claims approved by the Court beyond the Covered Claims of the Affected Associations and the Uncovered Claims, as set forth and approved in Section 4 above.

6. Since the assets of the Benicorp estate are not sufficient to satisfy, in full, the Class 2 claims approved by the Court, there will be no payment by the Benicorp estate on claims that fell within Class 3 or lower of Ind. Code 27-9-3-40.

7. The Liquidator shall deposit with the Indiana State Treasurer, in accordance with Ind. Code 27-9-3-43, any final disbursement checks which have not been negotiated, or which otherwise remain unclaimed, more than forty five (45) days following the final disbursement of Benicorp's assets.

8. The Liquidator shall make necessary arrangements and shall pay the cost of: (i) storing all of the records of Benicorp in the possession of the Liquidator (in a safe and secure environment) until February 28, 2022 ("Destruction Date"); and (ii) destroying all such Benicorp records (in a safe and secure manner) on or after the Destruction Date. While such records are held in storage, the Indiana Insurance Commissioner (or other representatives he designates in writing) shall be authorized to access and review such records.

9. The Liquidator shall make necessary arrangements and shall pay the costs to prepare and file final tax returns with both the Internal Revenue Service and the Indiana

Department of Revenue, confirming that the estate is being closed and that there are no tax obligations owed.

10. After the Liquidator has disbursed all of Benicorp's assets as directed above, the Liquidator shall file with the Court a Final Certificate of Compliance, confirming that such final distribution has been made and that all other directives to close the estate as set forth in this Final Judgment have been or are being implemented. Service of that Final Certificate of Compliance shall only be made on those individuals currently listed on the Schedule of Service.

11. Upon final distribution of Benicorp assets and the filing of the Final Certificate of Compliance:

- a) The corporate existence of Benicorp shall be dissolved in accordance with Ind. Code 27-9-3-9(a); and
- b) The Liquidator, prior Liquidators, prior Rehabilitators, Special Deputy, prior Special Deputy, Assistant Special Deputy, Indiana Insolvency, Inc., Noble Consulting Services, Inc., Consultants (as those terms are defined in the Final Accounting) and Dentons Bingham Greenebaum LLP (including all of their respective officers, employees, partners, agents, representatives, predecessors, successors and assigns) shall be completely and fully discharged and released from any and all further duties or responsibilities and from any and all claims, demands, actions, causes of action, liabilities or any other exposure (direct or indirect, known or unknown, personal or otherwise, which now exist or may hereafter arise and whether based on statutory, contract, equitable or any other claim or theory) which in any manner arise out of or relate to Benicorp, the Confidential Seizure Order, the prior Rehabilitation proceeding, this Liquidation proceeding, claims which were or could have been asserted in this proceeding and any act, omission or other conduct related to the Rehabilitation and/or Liquidation of Benicorp.

12. Other than the Liquidator's obligation to file and serve the Final Certificate of Compliance in accordance with paragraph 10 above, no further notice will be provided of the Court's approval of the Final Accounting or any of the actions to be performed as directed herein.

13. There is no just reason to delay approval of the Final Accounting in all respects (as specifically and expressly set forth herein) and, therefore, this Order constitutes a FINAL JUDGMENT.

Dated: _____

JUDGE, Marion County Circuit Court

Distribution:

Donald J. Graham
DENTONS BINGHAM GREENEBAUM LLP
2700 Market Tower
10 West Market Street
Indianapolis, IN 46204-4900

Andrew W. Hull
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