

2. On August 9, 2007, the Commissioner filed a Verified Petition for Rehabilitation (“Rehabilitation Petition”) as against Benicorp. The Rehabilitation Petition also included a Plan to Facilitate the Transition of Benicorp’s Existing Business (“Transition Plan”) to other solvent health insurers. Counsel for the Commissioner provided prior notice of the Rehabilitation Petition (including the Transition Plan) to representatives of Benicorp, McKee and the National Organization of Life and Health Insurance Guaranty Associations (“NOLHGA”). A hearing was held in open Court on August 9, 2007, at which representatives appeared on behalf of the Commissioner, Benicorp, McKee, NOLHGA and Associated Bank. During the hearing, evidence and arguments were presented on behalf of the Commissioner in support of the Rehabilitation Petition (including the Transition Plan), a duly authorized representative of Benicorp consented to the relief requested in the Rehabilitation Petition and all present were given the opportunity to cross-examine witnesses, present evidence and submit argument. At conclusion of the hearing, the Court entered a final Order of Rehabilitation, pursuant to Ind. Code 27-9-3, appointing the Commissioner (and his successors in office) as Rehabilitator of Benicorp and approving the Transition Plan.

3. Pursuant to the Transition Plan:

- A) United Healthcare (“UHC”) sent to each of the then existing Benicorp employer groups and to their agents or brokers, a quotation proposal for UHC to provide health coverage to that group commencing as of October 1, 2007;
- B) As part of its proposals, UHC committed and guaranteed that it would issue to each employer group (including all individuals within each group) the coverage as described in the proposal for that group, at the quoted rates, and that it would not decline coverage to any Benicorp group (or to any individual within such group) due to pre-existing conditions or otherwise, so long as the proposal was accepted, in writing, on or before October 1, 2007;

- C) Benicorp insureds who elected not to accept the UHC proposal, also had the option to move their coverage from Benicorp to other health insurers; and
- D) To the extent a Benicorp insured either accepted UHC's proposal or decided to move coverage to another health insurer, the coverage then being provided by Benicorp to that insured (including employer groups and all individuals within such groups) terminated immediately upon the effective date of the new health insurer's coverage.

4. The Termination Plan provided an expedited, yet orderly, transition of the policyholders previously insured by Benicorp to solvent insurers. As of October 2, 2007, over ninety-nine percent (99%) of the employer groups whose coverage was provided by Benicorp on August 9, 2007, had transferred their group coverage (including coverage for all the individuals within their groups) to other health insurers, with approximately sixty percent (60%) transferring to UHC and approximately forty percent (40%) to other companies. Coverage under the few Benicorp policies which remained in effect as of October 2, 2007, promptly terminated thereafter as the remaining Benicorp insureds either transferred their 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 advanced notice to the insureds as required by such enabling acts. As of January 1, 2008, virtually all Benicorp policies had terminated and no Benicorp policy was in effect as of January 1, 2009.

5. On August 17, 2007, the Rehabilitator filed a Verified Petition for Liquidation ("Liquidation Petition") as against Benicorp and the Court set the Liquidation Petition for hearing on October 5, 2007. The Court also directed the Rehabilitator to give broad notice, by mailings and publication, that the Liquidation Petition had been filed and notice of the date, time and location of the scheduled hearing. The Rehabilitator timely provided such notice, as confirmed by the Certificate of Compliance filed with the Court on October 4, 2007.

6. On September 28, 2007, the Rehabilitator also filed Recommendations Concerning Liquidation Procedures, Claims and Notices (“Liquidation Procedures”), requesting that the Liquidation Procedures also be heard and considered at the October 5, 2007 hearing.

7. After considering the Liquidation Petition and the evidence and arguments presented at the October 5, 2007 hearing, the Court entered that date a final Order of Liquidation against Benicorp pursuant to Ind. Code 27-9-3. The Order found Benicorp to be insolvent, terminated the Rehabilitation proceeding then pending against Benicorp, appointed the Commissioner (and his successors in office) as Liquidator of Benicorp and directed the Liquidator to take possession of the business, books, records and assets of Benicorp and to liquidate the company in accordance with Ind. Code 27-9-3 and under the general supervision of the Court. The Court also entered a second Order on October 5, 2007, which approved in all respects the Liquidation Procedures.

8. As directed by the Court, the Liquidator timely provided notice, both by mailings and publication, that the Liquidation Order and the Order Approving Liquidation Procedures had been entered, as confirmed by the Certificate of Compliance filed February 4, 2008.

9. In accordance with Ind. Code 27-9-1-3(f) and 27-9-3-22, this Court has exclusive subject matter and personal jurisdiction 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.

10. As a result of the finding of insolvency and Order of Liquidation entered against Benicorp, the Life and Health Insurance Guaranty Associations in the 28 states in which Benicorp was licensed to do business (hereinafter collectively the “Affected Associations”) assumed certain obligations for unpaid claims that arose prior to the termination of Benicorp’s

policies, consistent with and subject to the coverage obligations and limitations set forth in their respective enabling acts. The Affected Associations and NOLHGA entered into a Service Agreement with the Liquidator, as approved by the Court, to facilitate the identification and processing of valid and outstanding claims that arose under Benicorp policies prior to their termination and to expedite funding by the Affected Associations of all such claims for which they provided coverage (hereafter collectively “Covered Claims”). In accordance with Indiana’s Insurance Insolvency Act, each of the Affected Associations has the right to:

- A) Assert a Class 2 claim against the Benicorp estate to the extent of the Covered Claims for which it provided coverage – Ind. Code 27-9-3-40(2); and
- B) Assert a Class 1 claim against the Benicorp estate to the extent of reasonable administrative costs and expenses incurred by the Affected Association in handling the Covered Claims – Ind. Code 27-9-3-40(1)(F).

11. While the overwhelming majority of claims which arose out of Benicorp’s policies were covered by the Affected Associations, there were a limited number of valid Class 2 policyholder claims (totaling \$43,401.76) that exceeded the statutory caps of coverage provided by the Affected Associations (hereafter collectively “Uncovered Claims”). As described in more detail in paragraph 48, the Liquidator recommended that such Uncovered Claims be approved by the Court as Class 2 claims. The Liquidator also recommended that the Court authorized a forty percent (40%) partial distribution on such claims. The Court approved the Liquidator’s recommendations and partial payment was made on each of the Uncovered Claims, with the total of such payments being \$17,360.70.

12. As required by and consistent with Ind. Code 27-9-3-32, the Liquidator has recommended to the Court that early access distributions be made to certain of the Affected Associations and, under a procedure approved by the Court, the Liquidator entered into an Early

Access Agreement with NOLHGA and 25 (out of the 28) Affected Associations.¹ The 25 Affected Associations who elected to become parties to the Early Access Agreement are hereafter collectively referred to as the “Participating Associations.” The Participating Associations have shared in Early Access Distributions, to the extent approved and authorized by the Court, on a pro-rata basis consistent with their respective Class 2 claims against the Benicorp estate.

13. While Benicorp was an ongoing business (before commencement of the Confidential Seizure, Rehabilitation or Liquidation proceedings) it deposited certain of its assets with the Insurance Department or other regulators of various states, consistent with statutes in those states. These deposits (“Special Deposits” or “State Deposits”) were made as a requirement for Benicorp to be licensed and to conduct business in such states. The statutes governing the State Deposits also provided protection for creditors in such states, in the event that Benicorp later became impaired or insolvent. Indiana’s Insurance Insolvency Act recognizes State Deposits, indicating that the “owners of special deposit claims against an insurer for which a liquidator is appointed in this or in any other state shall be given priority against the special deposits in accordance with the statutes governing the creation and maintenance of the deposits.” Ind. Code 27-9-4-9(b).

14. Given the claim priority governing State Deposits, the Liquidator was not able to recover, as general assets of the estate, the following State Deposits:

- A) **Georgia and Tennessee.** The State Deposits in Georgia and Tennessee were recovered by the Affected Associations in those two states. However, the amount of the State Deposit in Georgia was not sufficient to fully satisfy the Class 1 claim of the Georgia Association. While the amount of the State Deposit in Tennessee was sufficient to fully satisfy the

¹ The New Mexico, North Carolina and South Carolina Guaranty Associations are the 3 Affected Associations that elected not to become parties to the Early Access Agreement. Accordingly, these three (3) Affected Associations have not received any portion of Court approved early access distributions from the Benicorp estate.

Class 1 claim of the Tennessee Association, the remaining balance was not sufficient to satisfy all the Class 2 claim of the Tennessee Association. Accordingly, both the Georgia and Tennessee Associations elected to become Participating Associations. The balance of the Tennessee State Deposit (which remained after payment of the Tennessee Association's Class 1 claim) was considered in the allocation of early access distributions, such that the Tennessee Association only received early access distributions to the extent necessary to bring its total pro-rata recovery up to the same level as the other Participating Associations.

- B) **New Mexico, North Carolina and South Carolina.** In all three of these states, the amount of the State Deposit exceeded the total of the Class 1 and Class 2 claims of the applicable Affected Association. Accordingly, the Affected Associations in each of these three states asserted their Class 1 and Class 2 claims against their respective State Deposit. In order to facilitate release of these State Deposits, the Liquidator entered into an Assignment Agreement as described in paragraph 15 below.

15. The Liquidator recommended and the Court approved an Assignment Agreement, by which the State Deposits in New Mexico, North Carolina and South Carolina were assigned to the respective Affected Associations in each of these states, in accordance with and subject to the following terms and conditions:

- A) The Affected Association in each state, upon its receipt of the State Deposit, would satisfy its Class 1 and Class 2 claims out of the State Deposit, consistent with Ind. Code 27-9-4-9(b);
- B) All assets of the State Deposit which exceeded the Claims of the applicable Affected Association ("Surplus"), would be transferred by that Affected Association to NOLHGA;
- C) Upon receipt of such Surplus, NOLHGA would allocate and disburse such funds to the Participating Associations, as an early access distribution and consistent with the Early Access Agreement; and
- D) The Surplus, as early access distributions to the Participating Associations, shall be considered in calculating the partial distributions to be made on Uncovered Claims, so that all approved Class 2 claims receive the same pro-rata recovery from estate assets.

The Assignment Agreement as approved by the Court, allows the estate to be closed under a procedure in which all approved Class 2 claims (both Covered Claims and Uncovered

Claims) will receive an appropriate partial distribution of estate assets consistent with Ind. Code 27-9, including Ind. Code 27-9-3-40 and 27-9-4-9(b).

II. ADMINISTRATIVE MATTERS

16. Pursuant to Ind. Code 27-9-3-9(b) and the Order of Liquidation, the Liquidator was authorized to appoint a Special Deputy, employ employees and agents, legal counsel, actuaries, accountants, appraisers and consultants and such other personnel as considered necessary to assist in the liquidation of Benicorp. The Liquidator, by statute and Court Order, also had authority to fix the compensation and expenses of such personnel, with such costs to be paid out of the funds or assets of Benicorp as a Class 1 expense under Ind. Code 27-9-3-40.

17. Randolph Lamberjack was initially appointed and continued to serve as Special Deputy Liquidator of Benicorp until his unfortunate passing. The Liquidator thereafter appointed Michael P. Dinius as Special Deputy Liquidator. Each Special Deputy, with the approval of the Commissioner, utilized the services of certain employees of Indiana Insolvency, Inc. and have and continue to utilize the services of certain employees of Noble Consulting Services Inc., to provide administrative services for and in support of the Benicorp liquidation. The Special Deputy also utilized, from time to time, the services of other consultants as deemed necessary for the proper and efficient administration of the estate (“Consultants”). The time which the Special Deputys, employees of Indiana Insolvency Inc., employees of Noble Consulting Services Inc. and the Consultants have and continue to devote to the Benicorp insolvency constitute Class 1 administrative expenses pursuant to Ind. Code 27-9-3-40.

18. Following entry of the Order of Liquidation, the Liquidator performed certain administrative tasks required as part of the liquidation proceeding at Benicorp’s business offices, located at 7702 Woodland Drive, Suite 200, Indianapolis, IN 46278. Subsequent to the Order of

Liquidation being entered, the Liquidator dramatically reduced the rental space occupied and utilized at the above referenced address, with a corresponding reduction in rent. Ultimately, the Liquidator determined that the office space was no longer required to administer the estate and, therefore, the office space was vacated and further rental payments were terminated. Rental payments for the portion of and duration for which the office space was actually utilized by the Liquidator were paid as a Class 1 administration expense under Ind. Code 27-9-3-40.

19. On the date the Order of Liquidation was entered, Benicorp employed approximately sixty-seven (67) employees. The Liquidator initially retained a level of employment sufficient to provide for the proper, necessary and efficient administration of the Benicorp estate. As the liquidation proceeded and less staffing was required the level of employment was reduced and, ultimately, all employees were terminated. Wages of the employees of Benicorp for the period in which their services were retained by the Liquidator were paid as a Class 1 expense under Ind. Code 27-9-3-40. An individual formerly employed by Benicorp now works for Noble Consulting Services, Inc. and provides certain services necessary for liquidation of the company on an as needed basis. The time expended by this individual on behalf of the Benicorp estate is paid as a Class 1 administrative expense.

20. Bingham Greenebaum Doll LLP continues to provide legal services to the Liquidator and the Special Deputy, with such services being paid as a Class 1 administrative expense.

21. Various other administrative expenses necessary to the liquidation of Benicorp continue to be paid as Class 1 claims, including the storage of Benicorp's records and maintenance of certain information systems relevant to the liquidation process.

22. As more fully described below, the Liquidator now reports that:

- A) All of Benicorp's assets and property have been identified and all such assets and property have been collected by the Liquidator; and
- B) All Proofs of Claim filed with the Liquidator against Benicorp have been identified and processed in accordance with Ind. Code 27-9-3.

23. While the Liquidator did not receive a Proof of Claim from any department, agency, office or other division of the Federal Government, the Liquidator recommends, as part of closing the Benicorp estate, that information be submitted to the United States Department of Justice for the purpose of seeking a Release Agreement ("Federal Release") with the United States (See Section VI below). Once an acceptable Federal Release is obtained, the Liquidator recommends that the Benicorp estate should thereafter promptly be closed in the manner described in this Final Accounting.

24. The Liquidator will outline herein all the conditions and recommended procedures necessary to close the estate. By proceeding as outlined in this Final Accounting, the Liquidator believes the remaining administrative costs and expenses necessary to close the estate, which are outlined in Section VII of this Final Accounting, will be minimized.

III. MARSHALLING OF ASSETS

25. Pursuant to applicable laws, the Order of Liquidation and other Orders as issued by this Court, the Liquidator took possession of and was vested by operation of law with title to all of the property, assets, contracts, rights of action and all of the books and records of Benicorp.

26. Not only did the Liquidator take control of all assets which were in the possession of Benicorp at the time it was placed into proceedings under Ind. Code 27-9-3, the Liquidator also pursued recovery of certain claims, payments or assets to which Benicorp was entitled. This included pursuit of reinsurance recoveries that resulted in the estate receiving \$25,781,509 from Munich Reinsurance America Inc., formerly American Re-Insurance Company, as described in

the September 24, 2010 Motion to Approve Commutation and Release Agreement which was approved by the Court on October 13, 2010.²

27. The Liquidator also pursued recovery of certain additional assets for the benefit of the estate, most notably the recovery of tax refunds. Because Benicorp's tax returns were previously filed on a consolidated basis by its parent, McKee, the amended returns to request tax refunds for Benicorp (and for Benicorp Financial Inc., a related entity within the consolidated group) had to be filed by McKee.³ The Liquidator and the McKee Trustee reached an agreement on the filing of amended returns and how tax refunds, to the extent received from the Internal Revenue Service ("IRS"), should be allocated. Consistent with the Agreement reached, the Liquidator filed a Motion to Approve Settlement of Tax Refund Claim which was, thereafter, approved by the Court. The McKee Trustee also submitted the proposed settlement agreement to the Bankruptcy Court, which issued its approval as well.

28. Pursuant to the settlement, the McKee Trustee filed amended returns with the IRS seeking tax refunds for 2004, 2005 and 2006. The McKee Trustee ultimately received tax refunds for 2004 (\$2,143,257.02) and for 2005 (\$1,128,928.87), but did not receive a refund for tax year 2006.

29. With respect to the two tax refunds received, the McKee Trustee has now disbursed to the Liquidator, consistent with the Court approved settlement, Benicorp's pro-rata share of such refunds in the amount of \$2,401,497.

² The reinsurance recoveries have, in large part, been utilized to fund early access distributions to the Guaranty Associations, consistent with Ind. Code 27-9-3-32 and as approved by the Court.

³ On December 13, 2007, McKee filed a voluntary Chapter 7 Bankruptcy Case (Case No. 07-23375) in the United States Bankruptcy Court for the Northern District of Illinois. David R. Henzog was appointed as Trustee in the bankruptcy proceeding ("McKee Trustee").

30. The Liquidator thereafter received documentation confirming that McKee had received a \$592,550 refund from the IRS (for tax year 2006) on March 26, 2007, which was before the Order of Liquidation, Order of Rehabilitation and/or the Confidential Seizure Order were entered against Benicorp. This information confirmed that no further tax refunds would be paid by the IRS to the McKee Trustee.

31. Upon learning this information, the Liquidator reopened discussions with the McKee Trustee as to how the funds then remaining in the McKee estate (approximately \$334,000) should be allocated and paid. A settlement was ultimately reached with the McKee Trustee, McKee Heritage Holding Corporation and McKee Family Partnership, as explained in the Report on Tax Refund and Recommendations as to Final Settlement of all Claims as filed with and approved by the Court. Pursuant to this settlement, the McKee Trustee has now made a final payment to the Liquidator, for the benefit of the Benicorp estate, in the amount of \$267,200. Based on the above, all claims and disputes as between Benicorp, McKee and all affiliates of McKee have now been settled and resolved.

IV. CLAIM SUMMARY

32. Pursuant to the Liquidation Procedures approved by the Court and in accordance with Ind. Code 27-9-3-34 and 27-9-3-41, Proofs of Claims that were filed in the Benicorp liquidation proceeding have been reviewed and processed. The first step in the Liquidator's review of each Proof of Claim was to make a preliminary determination as to the appropriate distribution priority class ("Class") to which the Proof of Claim should be assigned under Ind. Code 27-9-3-40. Because the assets of the Benicorp Estate are insufficient to pay Class 2 claims in their entirety, if the Liquidator determined that a claim fell within Class 3 or lower, then the

Liquidator's claim review was limited solely to the Class determination, without expending the time and cost to adjudicate the proper value of the Proof of Claim.

33. For Proofs of Claim which the Liquidator determined fell within Class 2, the claim review process also included a determination of the amount of the claim, if any, which was due and owing under the terms of the applicable Benicorp policy.

34. Pursuant to the Court approved Service Agreement between the Liquidator, NOLHGA and the Affected Associations, the Liquidator sent Explanation of Benefits ("EOBs") on outstanding claims arising out of Benicorp's policies to NOLHGA and, in turn, to the appropriate Affected Association. If the Affected Association agreed with the EOB and determined that the claim, in whole or in part, qualified for coverage under its enabling act, the Affected Association then funded the payment necessary to settle the covered portion of the claim, consistent with its statutory coverage obligation.⁴

35. NOLHGA submitted to the Liquidator an Omnibus Proof of Claim (including certain updates thereto) on behalf of all the Affected Associations ("Omnibus Claim"). The Omnibus Claim includes both the Class 1 (administrative) and Class 2 (policy level) claims for each of the Affected Associations.⁵

36. In a Petition filed with the Court on March 17, 2010, the Liquidator initially recommended that the Class 1 claims of the Affected Associations be approved in the amount of \$1,827,387, consistent with the Omnibus Claim as then submitted by NOLHGA. In that same Petition, the Liquidator also recommended that the Benicorp estate make payment on such Class

⁴ To the extent an Affected Association provides coverage for a claim arising out of a Benicorp policy, the Affected Association is subrogated to and has the right to assert a Class 2 claim against Benicorp in the amount of coverage provided, consistent with Ind. Code 27-9-3-40(2).

⁵ As to the Class 1 claims, the Omnibus Claim identified both the administrative expenses as directly incurred by each of the individual Affected Associations and the administrative expenses as incurred by NOLHGA on behalf of the Affected Associations, including the allocation of such expenses to each of the Affected Associations.

1 Claims in the amount of \$1,618,796. The difference between the amount of the Class 1 claims recommended for approval and the amount recommended for payment from Benicorp's general assets, took into account that certain Affected Associations (as described in paragraph 14) were pursuing recovery of their claims (including Class 1 claims) from State Deposits not in the possession or control of the Liquidator. In an Order dated April 29, 2010, the Court both approved the Class 1 claims of the Affected Associations in the amount of \$1,827,387 and approved Benicorp making a payment thereon in the amount of \$1,618,796, which payment was made by the Liquidator on behalf of the estate.

37. NOLHGA thereafter submitted to the Liquidator an updated and final Omnibus Claim, which included the final administrative expenses of the Affected Associations. The total Class 1 claims of the Affected Associations set forth therein was \$1,866,232 (an increase of \$38,845 as compared to the Class 1 claims previously approved by the Court). The Liquidator now recommends that the Court approve the Class 1 claims of each Affected Association in the amount set forth in the final Omnibus Claim, so that the total approved Class 1 claims of the Affected Associations will be \$1,866,232. However, similar to the procedure described in paragraph 36, the Liquidator does not recommend that this full amount be paid from estate assets that were or are now in possession of the Liquidator. The difference is to account for the fact that the following Affected Associations satisfied their Class 1 claims (in whole or in part) out of State Deposits, which were never in the possession and control of the Liquidator.

<u>Affected Association</u>	<u>Class 1 Payments from State Deposits</u>
Georgia	\$100,000
New Mexico	\$12,902
North Carolina	\$18,330
South Carolina	\$18,840
Tennessee	<u>\$46,441</u>
	\$196,513

38. If the Court approves the Liquidator's recommendation that the Class 1 claims of the Affected Associations be approved in the amount of \$1,866,232, and considering both the Class 1 payment previously made by the Liquidator (\$1,618,796) and the Class 1 claims which have been satisfied out of State Deposits (\$196,513), the Liquidator recommends (as part of the final distribution of Benicorp's general assets) that \$50,923 be paid to NOLHGA as the final payment of Class 1 claims of the Affected Associations. The Liquidator also recommends that NOLHGA, upon receipt of such payment, appropriately allocate and distribute that amount in satisfaction of the remaining Class 1 claims of the Participating Associations.

39. The Liquidator sent a Claim Recommendation letter to NOLHGA describing (consistent with paragraphs 37 and 38 above) both the Liquidator's determination as to: (i) the amount of the Class 1 claims of the Affected Associations which should be approved; and (ii) the amount of the Class 1 claims of the Participating Associations that should be paid out of estate assets (considering both the Class 1 payment previously made by the Liquidator and the Class 1 payment to be made at final distribution).⁶

40. With respect to Class 2 (policy level) claims, the Benicorp estate does not have sufficient assets to pay such claims in full. The Liquidator will, therefore, present evidence at the hearing on the Final Accounting to establish Benicorp asset-to-liability ratio applicable to Class 2 claims, which will be utilized to allocate the final distribution as between the Covered Claims and the Uncovered Claims, as described in more detail below.

41. Information contained in the Omnibus Claim with respect to Class 2 Claims of the Affected Associations can be summarized as follows:

⁶ The sixty (60) day period to review and object to this claim determination letter has recently expired, with no objection being received by the Liquidator.

- A) The Affected Associations collectively funded a total of fifty one million three hundred seventy six thousand seven hundred one dollars (\$51,376,701) of Class 2 Claims;
- B) The Affected Associations collectively received a total of ninety eight thousand nine hundred ninety eight dollars (\$98,998) in premiums for coverage which extended beyond the Order of Liquidation date; and
- C) Given the above, the net policy level obligations funded by the Affected Associations as a result of Benicorp's insolvency, is fifty one million two hundred seventy seven thousand seven hundred three dollars (\$51,277,703).

42. After NOLHGA's submission of the final Omnibus Claim, a Court approved settlement was reached on a disputed Class 2 claim filed by or on behalf of the Rubber Shop, Inc., d/b/a Royal Rubber Company, Victor Grabovez and Claire Grabovez ("Disputed Claim A"). Pursuant to that settlement, the Indiana Life and Health Insurance Guaranty Association ("ILHIGA") made payment in the amount of \$135,000 and that payment was specifically approved by the Court as a Class 2 Claim.

43. Given the claim payments funded by the Affected Associations, including those listed in the Omnibus Claim and the settlement payment by ILHIGA to resolve Disputed Claim A, all known Class 2 Claims covered by an Affected Association have been paid. Accordingly, the Liquidator recommends that the Court approve the Class 2 claims of each of the Affected Associations in the amounts set forth in the final Omnibus Claim, so that the total of all approved Class 2 claims of the Affected Associations, considering both the final Omnibus Claim and ILHIGA's payment to resolve Disputed Claim A, will be \$51,412,703. Based on the information set forth below the Liquidator does not, however, recommend that the general assets of the Benicorp estate be used to make partial payments on all Class 2 claims of the Affected Associations:

- A) As previously explained, the Guaranty Associations in New Mexico, North Carolina and South Carolina satisfied all their Class 2 claims out of State Deposits in their respective states.⁷ The Class 2 claims for these three Affected Associations, as listed in NOLHGA’s final Omnibus Claim, are as follows:

New Mexico -----	\$12,575
North Carolina-----	\$56,377
South Carolina-----	\$21,296

- B) While the Affected Associations in Georgia and Tennessee elected to become Participating Associations, they were able to recover the State Deposits held in their respective states. The State Deposit in Georgia was not sufficient to fully satisfy the Georgia Association’s Class 1 claim and, therefore, no portion of that deposit was applied to Class 2 claims. The State Deposit in Tennessee was sufficient to fully satisfy the Class 1 claims of the Tennessee Association and to satisfy a portion (but not all) of the Class 2 claims of the Tennessee Association.

44. If the Court approves the Liquidator’s recommendation that the Class 2 claims of the Affected Associations be approved in the amount of \$51,412,703, the Liquidator further recommends that at final distribution (after payment of all Class 1 claims) that the remaining Benicorp general assets then in the possession and control of the Liquidator should be disbursed on a pro-rata basis (consistent with Benicorp’s final Class 2 asset to liability ratio) to the individuals who have Uncovered Claims (as explained in paragraph 49 below) and to NOLHGA for the benefit of the Participating Associations. It is further recommended that upon NOLHGA’s receipt of the applicable portion of the Class 2 final distribution, it shall allocate and distribute such amount consistent with the following:

- A) No portion of the final distribution shall be paid to the New Mexico, North Carolina or South Carolina Guaranty Associations (who recovered their Class 2 claims from their respective State Deposits); and
- B) The final distribution shall be allocated and distributed by NOLHGA to the Participating Associations on a pro-rata basis, taking into consideration

⁷ The Deposits in each of these three states exceeded the total of the Class 1 and Class 2 claims of the Affected Association of that state. See paragraph 15 for a description of how the Surplus (amount by which the State Deposit exceeded the total of the Class 1 and Class 2 claims of the applicable Affected Association) has been accounted for.

Tennessee's partial satisfaction of its Class 2 claims from its State Deposit and all early access distributions, including those made by the Liquidator and the Surplus received from the New Mexico, North Carolina and South Carolina State Deposits.

45. The Liquidator sent a Claim Recommendation letter to NOLHGA, describing (consistent with paragraphs 41, 42, 43 and 44 above) both the Liquidator's determination as to: (i) the amount of the Class 2 claims of the Affected Associations which should be approved; and (ii) how final distribution of Benicorp's general assets should be made on the Class 2 claims of the Participating Associations.⁸

46. In addition to the Covered Claims of the Affected Associations, the Liquidator previously sent Claim Recommendation letters on all other Proofs of Claim which the Liquidator determined fell within Class 2 under Ind. Code 27-9-3-40. The Claim Recommendations indicated, for each Proof of Claim falling within Class 2, whether the Liquidator determined that the Claim should be approved, approved in part or denied.⁹ The Claim Recommendations also advised each of these claimants that they had sixty (60) days to object if they disagreed with the Liquidator's determination and, failing to do so, no further objection could thereafter be raised.

47. In the Third Accounting, the Liquidator recommended that the Court approve the Liquidator's Claim Recommendations for certain Class 2 Proofs of Claim to which no objection had been timely asserted, as listed in Exhibits B, C, D and E to that Accounting and as summarized below:¹⁰

⁸ The sixty (60) day period to review and object to this claim determination letter has recently expired, with no objection being received by the Liquidator.

⁹ With respect to policyholders or health care providers who filed Class 2 Proofs of Claim that were covered and funded by an Affected Association, the Liquidator determined that the Proof of Claim filed by that policyholder or healthcare provider should be denied, to the extent that such claim was covered by the Affected Association. That denial applies only to the Proof of Claim filed by the claimant, not to the subrogation claim of the Affected Association.

¹⁰ Exhibits B, C, D and E to the Third Accounting contained personal, confidential and protected information under Administrative Rule 9(G)(1) and Ind. Code 5-14-3-4(4) and were, therefore, filed "Under Seal" in accordance with Trial Rule 5(G).

Exhibit B – Class 2 claims denied as invalid;

Exhibit C – Class 2 claims which fell within the deductible of the applicable policy and, therefore, were denied as a claim against the Benicorp estate;

Exhibit D – Class 2 claims denied on the basis that coverage had been provided by the applicable Affected Association; and

Exhibit E – Class 2 claims recommended for approval and which exceeded the coverage provided by the applicable Affected Association.

By Order dated July 3, 2012, the Court specifically adopted and approved the Liquidator's Claim Recommendations as to all the Proofs of Claim submitted with the Third Accounting.

48. As noted above, Exhibit E to the Third Accounting specifically listed the Class 2 claims recommended for approval by the Liquidator which were not covered by an Affected Association ("Uncovered Claims"). These claims relate to three (3) individuals whose total approved Class 2 claims exceeded the statutory caps and limitations of coverage set forth in the enabling act of their Affected Association. The total of such Uncovered Claims (amount which exceeded the claims covered by the Affected Associations) was \$43,401.76, which the Court approved as Class 2 claims in the Third Accounting.

49. As part of the final distribution of the assets still held in the Benicorp estate, the Liquidator recommends (as described in more detail in Section VII below) that final partial payments be made on such Uncovered Claims. The amount of such payments shall be consistent with Benicorp's final asset to liability ratio for Class 2 claims, after considering the Partial Payments already made on such Uncovered Claims, so that the final distribution of Benicorp's assets will be made in accordance with Ind. Code 27-9, including Ind. Code 27-9-3-40 and 27-9-4-9(b).

50. Listed below are the only Proofs of Claim which the Liquidator assigned to Class 2, but which were not previously submitted to the Court with the Third Accounting, along with an explanation of the Liquidator's determination with respect to each of these Proofs of Claim:

- A) The Omnibus Claim submitted by NOLHGA on behalf of the Affected Associations, which was assigned the following two Proof of Claim numbers – 20080616080421 and 20080616144137. The Liquidator's determination and recommendation with respect to the Omnibus Claim is set forth in paragraphs 37, 38, 41, 42, 43 and 44 of this Final Accounting.
- B) A Proof of Claim submitted by the Michigan Life and Health Insurance Guaranty Association ("MLHIGA"), which was assigned Proof of Claim number – 20080512115350. The Liquidator sent a claim determination letter to the 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 letter and the sixty (60) day period for asserting any such objection has expired.
- C) A Proof of Claim submitted by the Utah Life and Health Insurance Guaranty Association ("ULHIGA"), which was assigned Proof of Claim number – 20080516074306. The Liquidator sent a claim determination letter to ULHIGA, indicating that the Proof of Claim should be denied since the Class 1 and Class 2 claims of the ULHIGA were included in and would be considered as part of the Omnibus Claim submitted by NOLHGA, making Proof of Claim 20080516074306 a duplicative claim. The ULHIGA did not assert any objection to the claim determination letter and the sixty (60) day period for asserting any such objection has expired.
- D) A Proof of Claim submitted by the South Carolina Life & Accident & Health Insurance Guaranty Association ("SCLAHIGA"), which was assigned Proof of Claim number – 20080527080505. The Liquidator sent a claim determination letter to SCLAHIGA indicating that all its Class 1 and Class 2 claims had been satisfied out of the State Deposit in South Carolina and, therefore, its Proof of Claim should be denied. The sixty (60) day period to review and object to this claim determination letter has not yet expired, but will expire on or about May 23, 2017. As of the date this Final Accounting is filed with the Court, the Liquidator has received no objection from SCLAHIGA. If an objection is timely asserted, the Liquidator will so advise the Court.

The Liquidator now recommends that the Court approve the claim determinations for each of these Proofs of Claim as specifically described above.

51. Because the Benicorp estate does not have sufficient assets to pay approved Class 2 claims in full, no assets of the estate will be available to pay any claims falling within Class 3 through 9. Accordingly, when the Liquidator determined that a Proof of Claim fell within Class 3 or lower, the Liquidator did not expend the time or cost to determine what portion of the Proof of claim, if any, was valid. The claim determination letters sent by the Liquidator on all Proofs of Claims assigned to Class 3 or lower, advised the claimants of the class to which their claims were assigned and that there would be no funds available for payment of claims falling within that Class. Those letters also specifically advised that if a claimant disagreed with the Liquidator's determination as to the Class which the Proof of Claim was assigned, the claimant had sixty (60) days to challenge the Class assignment and, failing to do so, they would have no further right to object. The Liquidator did not receive any objections regarding Proofs of Claim assigned to Class 3 or lower, which were listed in Exhibit A to the Third Accounting. In its July 3, 2012 Order, the Court specifically approved the Liquidator's determination for all Proofs of Claim that were assigned to Class 3 or lower.

52. The Liquidator reports that all Proofs of Claim received have been fully processed and resolved in accordance with Ind. Code 27-9 and the Liquidation Procedures as established by the Court in this proceeding. The Liquidator also reports that if the Court approves all recommendations set forth in this Final Accounting, the final distribution of Benicorp's assets will be made in accordance with Ind. Code 27-9-3-40 and 27-9-4-9(b).

V.
REMAINING ASSETS

53. The Liquidator now reports to the Court that the total of Benicorp's assets now in the possession and control of the Liquidator is approximately two million eight hundred thousand dollars (\$2,800,000).

54. The Liquidator does not anticipate the recovery of any further estate assets.

55. Should the Court approve this Final Accounting, the Liquidator recommends that the remaining estate assets in the possession and control of the Liquidator be disbursed in the manner specifically set forth in paragraphs 68 through 73 below.

VI.
RECOMMENDED RELEASE AGREEMENT

56. Indiana's Supervision; Rehabilitation; Liquidation Act sets forth a specific procedure for identifying and processing claims against an insolvent insurance company:

Ind. Code 27-9-3-10 – The Liquidator is required to provide broad notice, by mailing and publication, when an Order of Liquidation is entered, including notice of the Bar Date for filing Proofs of Claim against the insolvent estate;

Ind. Code 27-9-3-33 – Proofs of Claim must be filed with the Liquidator on or before the Bar Date and Proofs of Claim filed after the Bar Date are to be assigned to Class 7 (late filed claims) under Ind. Code 27-9-3-40;

Ind. Code 27-9-3-34 – Sets forth the information to be included in a Proof of Claim and the information which the Liquidator can request and consider in reviewing the Proof of Claim.

Ind. Code 27-9-3-37 – Directs that each claimant be provided written notice of the Liquidator's determination as to their Proof of Claim and requires the claimant to file any objection to the determination within sixty (60) days and, if no filing is made within that period, the claimant may not further object to the determination. If an objection is timely raised and the Liquidator and claimant are not able to settle their differences, the dispute is to be resolved by the Marion Circuit Court or by a referee appointed by the Court.

Ind. Code 27-9-3-40 – Establishes the following priority of distribution by which assets of the insolvent estate are to be used to pay valid claims:

Class 1 – Costs and expenses of administration;
Class 2 – Policyholder claims and claims of the guaranty associations;
Class 3 – Claims of the federal government;
Class 4 – Certain debts to employees;
Class 5 – Claims of general creditors;
Class 6 – Claims of any state or local government;
Class 7 – Late filed claims;
Class 8 – Claims on surplus or contribution notes; and
Class 9 – Claims of shareholders/owners.

57. The statutory claim procedures described above were all followed and implemented as part of the Benicorp liquidation proceeding. The Liquidator provided written and published notice, as directed by the Court, that the Order of Liquidation had been entered and that the Bar Date for filing claims was May 15, 2009. (See, Certificates of Compliance filed February 4, 2008 and October 15, 2008.) On or before April 29, 2008, a Notice packet was mailed to approximately 98,928 interested parties, including but not limited to:¹¹

- The Internal Revenue Service, at both its national and local offices;
- The United States Attorney for the Southern District of Indiana; and
- The Department of Justice.

58. The Notice as mailed and published by the Liquidator stated, in part, as follows:

The Liquidation Court has now established May 15, 2009, as the “Claims Bar Date.” TO HAVE YOUR CLAIM CONSIDERED IN THE BENICORP LIQUIDATION, YOU MUST COMPLETE AND SIGN A PROOF OF CLAIM (USING THE FORM SENT HEREWITH) AND SEND IT BY FIRST CLASS UNITED STATES MAIL, POSTAGE PREPAID, WITH SUCH MAILING TO BE POST-MARKED NO LATER THAN MAY 15, 2009, addressed to:

Benicorp Insurance Company, In Liquidation
c/o Special Deputy Liquidator
7702 Woodland Drive, Suite 200
Indianapolis, IN 46278-1717

¹¹ The Notice was also published in the Indianapolis Star on April 12, 2008.

59. The Notice packet also included the Proof of Claim form as approved by the Court and instructions as to how it should be completed and submitted in order to assert a claim against the estate.

60. The Liquidator reviewed and sent a written determination on each Proof of Claim received and all claimants were advised that they had sixty (60) days to object to the determination and, failing to do so, their right to further object would be waived.

61. The Liquidator reports that no Proof of Claim was received, either before or after the Bar Date, from any department, agency, office or other division of the United States Federal Government. Pursuant to the statutes and procedures governing claims against the Benicorp estate, the Federal Government (including all its departments, agencies, offices or other divisions) has waived the opportunity to timely assert a claim against the Benicorp estate.

62. Should the Federal Government hereafter seek to file a Proof of Claim against Benicorp, the Liquidator expressly reserves the right, in responding to and/or defending against any such claim, to assert and rely upon Indiana's statutes governing insurance insolvency proceedings and all Orders as issued by this Court. However, the Liquidator reports that the Federal Government may take the position that it is not bound to follow or adhere to certain insurance liquidation procedures. The Liquidator does not agree with that position and if raised by the Federal Government the Liquidator reserves the right to challenge any such assertion. Nevertheless, the Liquidator believes that it is in the best interest of all interested parties to confirm that the Federal Government has no claim as against the Benicorp estate and, thereby, avoid any dispute at a later date or any assertion that the Liquidator or Special Deputy Liquidator

is liable to the federal government under the Federal Priority Statute.¹² The Liquidator, therefore, recommends that it be given authority to submit certain information to the United States Department of Justice regarding the Benicorp liquidation, in order to request a Federal Release prior to the Benicorp estate being closed.

63. Assuming that an acceptable Federal Release is obtained, the Liquidator believes that the estate should then be promptly closed in accordance with the recommended procedures set forth in Section VII below. The Liquidator will immediately advise the Court, in writing, once a Federal Release is signed and will request, in that filing, that the Court then set a hearing on this Final Accounting in accordance with the recommended procedures set forth in Section VII below. If an acceptable Federal Release is obtained as outlined herein, the Liquidator does not contemplate or see the need for any further Court filings, beyond the request for and notice of hearing and the filing of a final Certificate of Compliance (once the estate has been finally closed in accordance with the Court's Final Judgment). By proceeding as outlined herein, the Liquidator believes that further costs and expenses of administration will be held to a minimum, thus preserving as many assets as possible for final distribution to the remaining creditors of the estate as recommended in Section VII below.

64. In the event the federal government hereafter asserts a claim, if the Liquidator is not able to reach an acceptable Federal Release or if some other developments arise that need to be addressed in order to close the estate, the Liquidator reserves the right to: (a) file either a supplement to this Final Accounting or another petition, describing the issues which then exist and the Liquidator's recommendation on how such issues should be resolved; and/or (b) request

¹² The Liquidator also asserts that Ind. Code 27-9 was enacted by the Indiana General Assembly for the purpose of regulating the business of insurance and, under the operation of the McCarren-Ferguson Act, 15 U.S.C. §§ 1011, 1012, these statutes reverse preempt the Federal Priority Statute found at 31 U.S.C. §3713.

that this Court (as the Court having exclusive jurisdiction over the liquidation of Benicorp) hear, consider, approve or otherwise resolve such development, issue or dispute, in order to allow for the closing of the estate, final distribution of assets and the release and discharge of the Liquidator and those operating under his direction and control. By proceeding in this manner, the Liquidator will only expend administrative time and costs to address issues which actually arise, if any, and which are necessary to ultimately close the estate. This approach will again minimize the costs and expenses of administration and, thereby, preserve assets for the benefit of Benicorp's creditors.

65. The Liquidator cannot now identify the length of time which will be required to request and hopefully obtain a Federal Release. During this period the Liquidator will, however, periodically advise the Court as to the progress being made towards entering into a Federal Release. The Liquidator hereby commits to filing such reports at least every six months and more often to report on any significant development or as otherwise requested by the Court.

VII.

LIQUIDATOR'S RECOMMENDATION FOR CLOSING THE ESTATE

66. The Liquidator believes that all of Benicorp's assets have been accounted for and all Proofs of Claim against the Estate have been identified and processed in accordance with Ind. Code 27-9-3-40 and Orders of this Court. It is, therefore, recommended that the Court authorize and direct the Liquidator to request a Federal Release in accordance with the procedure set forth in Section VI above. Once the Federal Release is obtained, the Liquidator recommends that the Court promptly schedule a hearing on this Final Accounting and, thereafter, enter a Final Judgment which authorizes and directs that all actions necessary to close the estate be taken, as specifically set forth below.

Retention and Destruction of Benicorp's Records

67. Pursuant to Ind. Code 27-9-3-46, when it appears to the Liquidator that records of a company being liquidated are no longer useful, the Liquidator may recommend to the Court that the records be destroyed. The Liquidator believes that Benicorp's records should be maintained for a period of time after the estate is closed and should then be destroyed. The Liquidator specifically recommends that the Court review and approve the following recommendations with respect to the retention and destruction of Benicorp's records in the possession of the Liquidator:

- A) Liquidator shall make necessary arrangements for, and shall pay the costs of: (i) storing all of the records of Benicorp in the possession of the Liquidator (in a safe and secure environment) for a period of one year following the Court's entry of a Final Judgment directing that the Benicorp estate be closed ("Destruction Date"); and (ii) destroying all such Benicorp records (in a safe and secure manner) on or promptly after the Destruction Date; and
- B) While such records are held in storage, the Commissioner (and his designated representatives) shall be authorized to access and review such records.

Final Distribution of Assets

68. The Liquidator recommends that the Court, after holding a hearing on this Final Accounting, enter an Order directing the final distribution of the Benicorp assets then in the possession and control of the Liquidator, in accordance with and pursuant to Ind. Code 27-9-3-40 and 27-9-3-42. The Liquidator specifically recommends that after payment of or provision for final Class 1 costs and expenses of administration, as set forth in paragraph 69 below (including the administrative costs and expenses to close out the Benicorp estate), that the Court order the Liquidator to disburse any and all remaining assets of the Benicorp estate on approved Class 2 claims, as set forth in paragraph 70 below.

69. The Liquidator recommends that the following be paid by the estate as the final Class 1 costs and expenses of administration necessary to close out the Benicorp estate:

- A) All costs incurred to pursue and obtain an acceptable Federal Release with the United States;
- B) A payment to NOLHGA in the amount of \$50,923, as final payment of the approved Class 1 Claims of the Affected Associations that have not previously been paid by the Liquidator (as described in paragraph 36) or have not been satisfied out of State Deposits (as described in paragraph 37);
- C) The costs to store and ultimately destroy all the records of Benicorp which are in the possession of the Liquidator, or those persons or entities operating under his direction and control (consistent with the specific recommendations set forth in paragraph 67 above);
- D) Once a Federal Release has been obtained, all costs associated with providing notice of both the filing of this Final Accounting and the hearing to be scheduled by the Court to consider the recommendations and requested relief as set forth herein;
- E) The cost of the Liquidator, the Special Deputy Liquidator and those operating under their direction and control, including Bingham Greenebaum Doll LLP as legal counsel for the Liquidator and Special Deputy Liquidator, to prepare for and participate in the hearing on this Final Accounting or any other hearing necessary to complete the liquidation of Benicorp and to close the estate;
- F) The cost of the Liquidator, the Special Deputy Liquidator and those operating under their direction and control, 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; and
- G) Once the Court enters a Final Judgment directing that the estate be closed (and if no appeal of that Final Judgment is taken), the costs of the Liquidator, the Special Deputy Liquidator and those acting under their direction and control to thereafter make the final distribution of assets from the Benicorp estate (consistent with the recommendations set forth in this paragraph 69 and paragraph 70 below) and to take all other actions to close out the Benicorp estate as authorized and directed by the Court.

70. After payment of or provision for the final Class 1 costs and expenses of administration (as recommended in paragraph 69 above), 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 of the Participating Associations (as described in paragraphs 43 and 44 above) and the Uncovered Claims (as described in paragraph 49 above). Since Benicorp's assets are not sufficient to pay all approved Class 2 claims in their entirety, the Liquidator recommends that partial payments be made on a pro-rata basis, consistent with Benicorp's final asset to liability ratio available for payment of approved Class 2 claims, so that all approved Class 2 claims (both Covered Claims and Uncovered Claims) receive their appropriate partial payment percentage. In making the final distribution of the assets in its possession and control, the Liquidator shall consider all Class 2 claims that were satisfied out of State Deposits, all Court approved early access distributions (including the Surplus from the New Mexico, North Carolina and South Carolina State Deposits) and the partial payments on the Uncovered Claims which have previously been made.

71. If the Court approves the recommendations set forth in paragraph 70 above, all remaining assets of the Benicorp estate will be disbursed consistent with Ind. Code 27-9, including Ind. Code 27-9-3-40 and 27-9-4-9(b). Such distributions should, however, be authorized only after the Court has approved this Final Accounting and after that Order has become final, binding and is no longer subject to appeal.

72. To the extent that any final disbursement checks issued by the Liquidator are not negotiated or otherwise remain unclaimed after forty five (45) days, it is recommended that the Liquidator then deposit such funds with the Indiana State Treasurer in accordance with Ind. Code 27-9-3-43.

73. The Liquidator recommends that any Order issued by the Court approving this Final Accounting, specifically require the Liquidator to file a Certificate of Compliance with the Court after final distribution of Benicorp's assets has been made (including delivery of unclaimed funds to the Indiana State Treasurer, if any), to confirm that such distribution has been completed in accordance with the Court's Order and to confirm that all other Court directives to close the estate have been implemented.

Dissolution of Corporate Existence

74. As part of the Court's Order approving the Final Accounting and closing of the insolvency estate, the Liquidator recommends (once the final distribution of assets has been made and the Certificate of Compliance has been filed) that the corporate existence of Benicorp be dissolved in accordance with Ind. Code 27-9-3-9(a).

Release and Discharge of the Liquidator

75. Pursuant to Ind. Code 27-9-3-44, the Liquidator recommends that any Order of the Court approving this Final Accounting also provide (once the final distribution of the assets has been made and the Certificate of Compliance has been filed) that the Liquidator, prior Liquidators, prior Rehabilitators, Special Deputy, prior Special Deputy, Assistant Special Deputy, Indiana Insolvency Inc., Noble Consulting Services, Inc., Consultants and Bingham Greenebaum Doll LLP (including all of their respective officers, employees, partners, agents, representatives, predecessors, successors and assigns) 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 actions, 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.

Timing of Hearing and Notice

76. Once the Liquidator reaches an acceptable Federal Release, the Liquidator will so advise the Court, in writing, and will also request in that filing that the Court schedule a hearing to consider all the recommendations contained in this Final Accounting. It is further recommended that the hearing on the Final Accounting be scheduled at least forty five (45) days after the date of the Order setting the hearing, to allow time for the Liquidator to provide notice of the Final Accounting, including the date, time and location of the scheduled hearing, in accordance with the procedures set forth below.

77. It is specifically recommended that the Liquidator be directed, within fifteen (15) days of the Court's Order scheduling the hearing, to mail (by U.S. First Class mail, postage pre-paid) a copy of the Notice (in substantially the form attached hereto as Exhibit A, with the date and time of the hearing inserted therein) to the following:

- (a) Former officers and directors of Benicorp;
- (b) The Bankruptcy Trustee for McKee Heritage Holding Corporation and Benicorp Financial, Inc.;
- (c) Reinsurers of Benicorp;
- (d) All prior policyholders of Benicorp, including employer groups that had contracts of insurance with Benicorp and their employees who, as enrollees, subscribers or members, had health insurance coverage through Benicorp.
- (e) All insurance producers of Benicorp;
- (f) In plan and known out of plan providers of Benicorp;

- (g) Parties or their counsel of record that had pending litigation and claims involving Benicorp;
- (h) Known creditors of Benicorp;
- (i) The Insurance Commissioners or Departments in each state or jurisdiction and the National Association of Insurance Commissioners;
- (j) The Indiana Secretary of State;
- (k) The Indiana Attorney General's Office;
- (l) The Indiana Department of Revenue;
- (m) The Marion County Auditor's Office;
- (n) The Internal Revenue Service, both at its national and local offices;
- (o) The United States Attorney for the Southern District of Indiana;
- (p) The Department of Justice; and
- (q) All who have filed their appearance in this proceeding.

78. Each Notice to be provided in accordance with paragraph 77 above should be mailed to the last known address indicated in Benicorp's records, except the Liquidator should be authorized and directed to utilize forwarding addresses, to the extent available from the U.S. Postal Service, in an effort to minimize the number of undeliverable Notices.

79. The Liquidator recommends that the Court direct the Liquidator, within fifteen (15) days of the date of the Court's Order setting the hearing, to publish a Notice (in substantially the form attached hereto as Exhibit A, with the date and time of the hearing inserted therein) in a newspaper of general circulation in Marion County, Indiana.

80. It is further recommended that within fifteen (15) days of the Court's Order setting a hearing, a copy of this Final Accounting and a copy of the Notice (in substantially the

form attached hereto as Exhibit A, with the date and time of the hearing inserted therein) be posted on the website of the Indiana Department of Insurance.

81. Upon completion of the mailings, publication and website posting as ordered by the Court, the Liquidator should be directed to file a Certificate of Compliance with the Court, confirming that the required notice has been given.

82. The Liquidator should also be directed to mail a copy of the Final Accounting, including Exhibits, to any interested person who sends a written request to the attention of the Liquidator's counsel at the following address, along with a check made payable to "Benicorp Insurance Company, in Liquidation" in the amount of \$15.00 to cover the cost of copying, handling and mailing.

Donald J. Graham
Bingham Greenebaum Doll LLP
2700 Market Tower
10 West Market Street
Indianapolis, IN 46204-4900

83. It is also recommended that the Order setting this Final Accounting for hearing specifically require that if any person wishes to object to: the Final Accounting; any of the recommendations of the Liquidator contained herein; any other matter regarding the proposed closing of the Benicorp estate; or if such person otherwise intends to appear at the hearing, that such person must file with the Court and serve upon Liquidator's counsel, no later than ten (10) days prior to the hearing, a notice of such intention to object or appear, together with a detailed statement of the objections and/or any other matters to be presented at the hearing.

84. Finally, if the Court determines after the hearing that this Final Accounting should be approved and a Final Judgment is entered which grants relief in substantially the form as herein recommended, the Liquidator respectfully requests that the Court also find and direct that

no further notice (whether by mailing, publication or website posting) will be required as to the Court's approval of the Final Accounting or the authorization of and direction to the Liquidator to thereafter make the final distribution and to otherwise close the estate.

WHEREFORE, the Liquidator respectfully requests that the Court: (i) enter an Order in the form attached hereto as Exhibit B, authorizing the Liquidator to pursue the Federal Release and directing the Liquidator to promptly advise the Court when an acceptable Federal Release is reached, so that the Court can, thereafter, set a hearing on this Final Accounting; (ii) after a hearing has been scheduled and held, approve this Final Accounting in all respects by the entry of a Final Judgment in the form attached hereto as Exhibit C; and (iii) enter all further relief the Court deems necessary and appropriate given the circumstances.

Respectfully Submitted,

/s/ Donald J. Graham
Donald J. Graham, #8005-49
Attorney for Liquidator

BINGHAM GREENEBAUM DOLL LLP
2700 Market Tower
10 West Market Street
Indianapolis, IN 46204-4900
(317) 635-8900

VERIFICATION

I, Michael P. Dinius, as Special Deputy Liquidator of Benicorp Insurance Company, affirm under the penalties of perjury that the foregoing representations are true.



Michael P. Dinius
Special Deputy Liquidator of
Benicorp Insurance Company

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing has been deposited in the U.S. Mail, first class postage prepaid, this 22nd day of May, 2017, addressed to the following:

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

Stephen W. Schwab
DLA PIPER US LLP
203 N. LaSalle Street, Suite 1900
Chicago, IL 60601-1293

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

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

Franklin D. O'Loughlin
Joel A. Glover
LEWIS ROCA ROTHGERBER CHRISTIE LLP
One Tabor Center
1200 Seventeenth Street, Suite 3000
Denver, CO 80202

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

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

/s/ Donald J. Graham

EXHIBIT A

Notice of Hearing

postage (make checks payable to “Benicorp Insurance Company, In Liquidation”):

Donald J. Graham
Bingham Greenebaum Doll LLP
2700 Market Tower
10 West Market Street
Indianapolis, IN 46204-4900

The Liquidation Court has scheduled a hearing to consider the Final Accounting on _____, commencing at _____ .m. The hearing will be held at the following location:

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

At the hearing the Liquidation Court will consider the Final Accounting and the Liquidator’s recommendations set forth therein, including the Liquidator’s recommendations to close the estate and to fully release and discharge the Liquidator and those operating under the direction and control of the Liquidator. The hearing may be continued from day to day until complete, without further notice except as may be announced at the hearing.

If you wish to appear at the hearing to object to the Final Accounting or otherwise wish to present any information to the Court regarding the Final Accounting, the recommendations of the Liquidator contained therein, or the closing of the Benicorp estate, then you must, on or before _____, send a written Notice of Intention to Appear or Object to the Liquidation Court (at the above referenced address for the Liquidation Court) and concurrently send a copy to the Liquidator’s counsel at the following address:

Donald J. Graham
Bingham Greenebaum Doll LLP
2700 Market Tower
10 West Market Street
Indianapolis, IN 46204-4900

If you submit a Notice of Intention to Appear or Object, you must specifically identify and describe therein any and all objections which you intend to present to the Court, including the basis of such objection(s), and any other matter which you wish to raise at the hearing.

BY ORDER OF THE LIQUIDATION COURT dated _____.

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

EXHIBIT B

Order to Pursue Federal Release

3) The Liquidator is ordered to promptly advise the Court, in writing, when an acceptable Federal Release has been obtained, so that the Court can thereafter schedule a hearing on the Final Accounting.

4) In the event any claim, dispute, issue or other development hereafter arises with respect to the request for Federal Release or which is not otherwise addressed in the Final Accounting, the Liquidator is authorized to: (a) file a supplement to the Final Accounting or another petition identifying the issue and how the Liquidator recommends the matter should be resolved; and/or (b) request that this Court (as the Court having sole and exclusive jurisdiction over the liquidation of Benicorp) hear, consider, approve or otherwise resolve any such development, issue or dispute that may arise, in order to allow for the closing of the estate, including the final distribution of estate assets and the release and discharge of the Liquidator and those operating under his direction and control.

Dated: _____

JUDGE, Marion County Circuit Court

Distribution:

Donald J. Graham
BINGHAM GREENEBAUM DOLL 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
DENSBORN BLACHLY LLP
500 East 96th Street, Suite 100
Indianapolis, IN 46240

Franklin D. O'Loughlin
Joel A. Glover
ROTHGERBER, JOHNSON & LYONS LLP
One Tabor Center
1200 Seventeenth Street, Suite 3000
Denver, CO 80202

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

Stephen W. Schwab
DLA PIPER US LLP
203 N. LaSalle Street, Suite 1900
Chicago, IL 60601-1293

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

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

EXHIBIT C

Final Judgment

Having considered the Final Accounting, the arguments and evidence presented in conjunction therewith at the hearing held on the ____ day of _____, _____ 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 and the hearing scheduled thereon 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, including all recommendations set forth therein, should be approved in all respects.

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

1. The Final Accounting, including all recommendations contained therein, is 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 as 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) As part of the final distribution of estate assets and after 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 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 shall 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 to date by the Liquidator (including persons and entities operating under the direction and control of the Liquidator). 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 are still to be incurred by the Liquidator (including persons and entities operating under the direction and control of the Liquidator) as necessary to close out the Benicorp estate consistent with this Final Judgment, including:
 - (i) All costs incurred to pursue and obtain the Federal Release;
 - (ii) The costs to store and ultimately destroy (no sooner than one (1) year from the date of this Final Judgment) all the records of Benicorp which are in the possession of the Liquidator or those operating under his direction or control;
 - (iii) All costs associated with providing notice (by mailings, publication and website postings) of both the filing of the Final Accounting and the hearing scheduled thereon;
 - (iv) The costs of the Liquidator, the Special Deputy Liquidator and those operating under their direction and control, including

Bingham Greenebaum Doll LLP as legal counsel for the Liquidator and Special Deputy Liquidator, to prepare for and participate in the hearing on the Final Accounting or any other hearing necessary to complete the Liquidation of Benicorp and to close the estate;

- (v) The costs of the Liquidator, the Special Deputy Liquidator and those operating under their direction and control, 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; and
- (vi) The costs of the Liquidator, the Special Deputy Liquidator and those operating under their direction and control, to make the final distribution of assets from the Benicorp estate as authorized and directed in this Final Judgment and to take all other actions to close out the Benicorp estate as authorized and directed by the Court.

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

- a) Based upon the evidence presented by the Liquidator at the hearing on the Final Accounting, the Court finds and declares that the asset to liability ratio of the Benicorp estate available for payment of approved Class 2 claims (after payment of all final Class 1 claims in accordance with Section 3 above), is _____ percent (____%).
- 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 final distribution of Benicorp's assets, to pay an additional _____ dollars (\$_____) on the Uncovered Claims (which amount shall be allocated on a pro-rata basis to each of the Uncovered Claims), which will bring the total partial payments on the Uncovered Claims to _____ percent (____%);
- 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 at on or about the time of 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 the National Organization of Life and Health Insurance Guaranty Associations, for the benefit of the Participating Associations with respect to their Class 2 claims;

- f) Upon receipt of this payment, NOLHGA shall appropriately allocate and distribute this amount to the Participating Associations consistent with the following:
- (i) No distribution of the Benicorp assets shall be made to the New Mexico, North Carolina and South Carolina Affected Associations, since these Guaranty Associations satisfied their Class 2 claims out of State Deposits (as set forth in Section 43 of the Final Accounting); and
 - (ii) With respect to NOLHGA's allocation of the Liquidator's final distribution on approved Class 2 claims among the Participating Associations, the following shall be considered so that each Participating Association receives its appropriate pro-rata recovery:
 - all early access distributions as approved by the Court and previously made by the Liquidator;
 - the Surplus (as defined in the Final Accounting) from the State Deposits in New Mexico, North Carolina and South Carolina, which constitutes an early access distribution to the Participating Associations; and
 - the recovery of the State Deposit by the Tennessee Guaranty Association, which partially satisfied approved Class 2 claims of that Participating Association.

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) for a period of one year following the entry of this Final Judgment ("Destruction Date"); and (ii) destroying all such Benicorp records (in a safe and secure manner) on or promptly after the Destruction Date. While such records are held in storage, the Indiana Insurance Commissioner (and his designated representatives) 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 a Certificate of Compliance with the Court, 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 implemented. Service of that Certificate of Compliance shall only be made on those individuals currently listed on the Schedule of Service.

11. Upon final distribution of Benicorp assets (including the delivery of unclaimed funds, if any, to the Indiana State Treasurer) and the filing of a 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 Bingham Greenebaum Doll 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 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

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