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ATTORNEYS FOR PETITIONER

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

VICKI SCHMIDT,)	
COMMISSIONER OF)	
INSURANCE,)	
<i>In her Official Capacity,</i>)	
)	
Petitioner,)	Case No. 2025 CV 151
)	
vs.)	
)	
KEY INSURANCE COMPANY,)	
)	
Respondent.)	

FIRST CLAIMS REVIEW REPORT

COMES NOW Commissioner of Insurance, Vicki Schmidt, in her capacity as Liquidator (“**Liquidator**”) of Key Insurance Company (“**Key**”), by and through counsel, and pursuant to K.S.A. 40-3642, presents to this Court the Liquidator’s First Claims Review Report (“**Report**”).

This Court entered a Final Order and Judgment of Liquidation with Finding of Insolvency of Key Insurance Company (“**Liquidation Order**”) placing Key into liquidation effective April 1, 2025 (the “**Liquidation Date**”), which found Key to be insolvent and terminated the rehabilitation proceedings. The Court appointed the Commissioner and her successors as Liquidator and approved the Liquidator’s appointment of Jodi M. Zimmermann (formerly Adolf) and Bruce E. Baty as her Special Deputy Receivers (“**SDRs**”). The Liquidation Order and the Kansas Insurers Supervision, Rehabilitation and Liquidation Act, K.S.A. 40-3605 et seq. (the “**Liquidation Act**”), set forth the claim adjudication procedures, and the Liquidation Order set the deadline for filing Proofs of Claim as April 1, 2026 (the “**Bar Date**”).

I. Claim Review Report

As of the Bar Date, the Liquidator received 1,429 Proofs of Claim in the Key Estate. At K.S.A. 40-3642, the Liquidation Act provides:

- The Liquidator shall review all claims duly filed in the liquidation and shall make such further investigation as necessary.
- She may compound, compromise or in any other manner negotiate the amount for which claims will be recommended to the Court.
- Unresolved disputes shall be determined under K.S.A. 40-3639.
- As soon as practicable, the Liquidator shall present to the Court a report of the claims against the insurer with recommendations thereon.
- The Court may approve, disapprove or modify the report on claims by the Liquidator.
- No claim under a policy of insurance shall be allowed for an amount in excess of the applicable policy limits.

Of the total number of Proofs of Claim filed, the Liquidator has reviewed 13 Proofs of Claim filed by third-party claimants¹ which allege “bad faith” arising from claims-handling actions or inactions by Key prior to the Court’s March 3, 2025 order placing Key into rehabilitation, and each of these claimants claim extra-contractual damages in excess of Key’s policy limits. Attached hereto as **Exhibit A** is a listing of these “**Bad Faith Proofs of Claim**,” showing the name and address of the claimants, the Key policyholder and policy number, the applicable policy limit, the amounts claimed in excess of those policy limits.² Attached hereto as **Exhibit B** is the Liquidator’s recommendation for each of the Bad Faith Proofs of Claim. For the reasons set forth below, the Liquidator recommends denying each of these Bad Faith Proofs of Claim because the Liquidation Act does not permit the allowance of claims in amounts in excess of applicable policy limits and bad faith claims are not otherwise recognizable in a Kansas liquidation proceeding.

II. No Claims Allowed for Amounts in Excess of Policy Limits

The Liquidation Act is absolutely clear with respect to bad faith claims: no claim under a policy of insurance shall be allowed for an amount in excess of the applicable policy limits. K.S.A. 40-3642(b). It would not matter, therefore, what the specific reasons are giving rise to the extra-contractual claim. As long as the Proof of Claim is based on a Key policy of insurance, the Liquidator may not, as a matter of law, approve a claim for an amount in excess of the underlying policy’s limit of liability.

Here, each of the 13 Bad Faith Proofs of Claim arise from an accident involving a Key policyholder and thereby triggering the coverage provisions of a Key insurance policy. Under

¹ No “first-party” policyholder Bad Faith Proofs of Claim were filed with the Liquidator.

² The total amount claimed by these third-party claimants in excess of policy limits exceeds \$60 million, which is \$10 million more than the Key estate’s total available assets for distribution.

Kansas law, an insurer has two implied contractual duties in handling claims against its insured: the duty to act with reasonable care and the duty to act in good faith. *Bollinger v. Nuss*, 202 Kan. 326, 332-33, 449 P.2d 502, 507-08 (1969). An insurer breaching either duty may expose itself to liability beyond the policy limits in the insurance contract. *Id.* See also *Granados v. Wilson*, 317 Kan. 34, 46, 523 P.3d 501, 511 (Kan. 2023). That Key claims adjusters may have breached one or both of these implied contractual duties of care in adjusting the claims of these 13 Bad Faith claimants prior to receivership does not change the fact that *upon liquidation*, the liability exposure to an insurer's estate arising therefrom is strictly limited by the insurance policy's available coverage. Amounts in excess of that amount are barred under K.S.A. 40-3642(b).

The Liquidator recommends that each of the Bad Faith Proofs of Claim be denied on this basis.

III. No Bad Faith Liability Under the Liquidation Act

The Liquidation Act provides the exclusive framework for resolving claims against an insolvent insurer, and the nature of bad faith liability is fundamentally incompatible with the statutory liquidation process.

A bad faith claim is not a cognizable claim against an insurance company in a Kansas liquidation proceedings for the following reasons: (1) the Liquidation Act provides the exclusive mechanism for resolving claims against an insolvent insurer; common law bad faith claims are displaced by this comprehensive statutory scheme; (2) the Liquidator is a neutral statutory official; the Commissioner of Insurance, as Liquidator, acts pursuant to court supervision and statutory authority, not in the capacity of an insurer exercising independent claims discretion, and thus cannot be held to a bad faith standard; (3) liquidation terminates the ongoing insurer-insured

relationship that forms the foundation of bad faith liability, and eliminates the deterrence rationale for punitive damages; (4) K.S.A. 40-3640 does not recognize punitive damages as a priority claim and awarding such damages would improperly prefer one claimant over all others in contravention of the Liquidation Act's equitable distribution principles; (5) the Liquidation Act's mandatory claims process and stay provisions (K.S.A. 40-3638, 40-3614) preclude the assertion of bad faith claims outside of the liquidation proceeding; and (6) state insurance guaranty association statutes expressly exclude bad faith and punitive damages claims from the definition of covered claims, further confirming that such claims have no role in the insolvency framework.

For these additional reasons, any bad faith claim asserted against an insurance company in a Kansas liquidation should be disallowed as a matter of law.

A. The Liquidation Act Provides the Exclusive Mechanism for Resolving Claims

The Liquidation Act governs the rehabilitation, liquidation, conservation, and dissolution of domestic insurance companies and the receivership of foreign insurers doing business in Kansas. The Liquidation Act is modeled on the National Association of Insurance Commissioners ("NAIC") Insurers Rehabilitation and Liquidation Model Act ("IRMA") and is designed to protect policyholders, creditors, and the public through an orderly, court-supervised process for winding up the affairs of insolvent insurers.

The Liquidation Act establishes a comprehensive statutory regime that is the exclusive mechanism for resolving claims against an insurer in liquidation.³ Courts in states that have

³ For example, Missouri courts have declared that Missouri's Insurance Code – a version that is very similar to the Kansas Insurance Code and is itself modeled on IRMA – is a comprehensive and self-contained statutory scheme for the liquidation of insurance companies:

The legislature, in enactment of the insurance laws, now Chapter 375 RSMo., 'has evidenced an intention to provide an exclusive code for insurance business, including the course to be followed in the distribution of

adopted substantially similar model act provisions have consistently held that the statutory liquidation process displaces common law remedies that would otherwise be available against a solvent insurer.⁴ Allowing individual claimants to pursue separate common law actions — including bad faith claims — outside of the liquidation proceeding would defeat the fundamental legislative purpose of the Liquidation Act: the equitable and orderly distribution of the insolvent insurer’s limited assets among all deserving and proper claimants.

Key provisions of the Liquidation Act include, first, appointment of the Commissioner of Insurance as liquidator of the insurer. K.S.A. 40-3621. The Commissioner, acting as liquidator, takes possession of all assets of the insurer and has broad statutory authority to collect, conserve, and distribute those assets. Second, K.S.A. 40-3638 requires that all claims against the estate of the insurer be filed with the liquidator within the time period established by the liquidation order. Claims not timely filed may be barred. The liquidation court has exclusive jurisdiction over all matters relating to the liquidation estate. Third, K.S.A. 40-3640 establishes a mandatory priority scheme for the distribution of the liquidation estate’s assets. The statute specifies the order in which classes of claims are paid, including administrative expenses, policyholder claims, general creditor claims, and surplus to shareholders. Punitive or exemplary damages claims are not recognized under any priority class under this scheme. Fourth, upon the entry of a liquidation or rehabilitation order, K.S.A. 40-3614 authorizes the court to issue injunctions staying all actions

the assets of a dissolved company among claimants and others entitled thereto, and excluding the application of statutes which might seem ... to be in conflict with any section of the insurance code. *O’Malley v. Prudential Cas. & Surety Co.*, 230 Mo. App. 935, 80 S.W.2d 896, 897 (1935).’ It is a valid exercise of the police power to regulate the business from beginning to end, thereby protecting public and private interests.

Medallion Ins. Co. v. Whartenbee, 568 S.W.2d 599, 601 (Mo.App.1978); see also *State ex rel. I.S.C. Fin. Corp. v. Kinder*, 648 S.W.2d 910, 913 (Mo.App. 1985).

⁴ See e.g., *McPherson v. Holland-America Ins. Co. Trust*, 1999 WL 408152 (Mo. Ct. App., W.D. 1999).

against the insurer or its assets, ensuring that no individual claimant obtains an advantage over the estate to the detriment of other similarly situated claimants.

B. The Liquidator Is a Statutory Official, Not the Insurer Itself

A threshold requirement of any bad faith claim is that the defendant be the insurance company — the party bound by the contractual duty of good faith and fair dealing. When an insurer is placed into liquidation, the Commissioner of Insurance, acting as liquidator, steps into the shoes of the insurer's management and takes control of the company's operations and assets. K.S.A. 40-3621. Critically, the liquidator is a neutral statutory official appointed by the court to administer the estate for the benefit of all creditors and policyholders — not a corporate insurer with an adversarial interest in denying claims.

The conduct of the liquidator in evaluating, allowing, or disallowing claims is governed entirely by statute and by court orders in the liquidation proceeding. The liquidator does not exercise the type of unbounded discretionary judgment over individual claims that underlies bad faith liability in the context of a solvent insurer. Because the liquidator acts pursuant to statutory authority and court supervision — not as an insurer exercising independent claims judgment — holding the liquidator (and, derivatively, the liquidation estate) to the bad faith standard would be both legally and conceptually inappropriate.

C. Liquidation Terminates the Insurer-Insured Relationship

Bad faith is rooted in the special relationship between an insurer and its insured — a relationship characterized by unequal bargaining power and the insured's dependence on the insurer to act fairly in honoring its contractual obligations. Courts in Kansas and elsewhere have

grounded bad faith liability in this relationship and its attendant duties. *E.g., Granados v. Wilson*, 317 Kan. 34, 46, 523 P.3d 501, 511 (see discussion *supra*).

Once an insurer is placed into liquidation the insurer ceases to operate as a going concern. It no longer writes new policies, manages existing policies in the ordinary course, or employs a claims department. The insurer's capacity to act as an insurance company — and thus to owe an ongoing contractual duty of good faith in claims handling — terminates.

Additionally, the insured-insurer relationship is restructured by statute. The insured's rights are no longer defined by the ongoing contractual relationship but rather by the Liquidation Act's claims process, the priority scheme, and (where applicable) coverage provided by a state insurance guaranty association.

D. The Liquidation Act Does Not Recognize Bad Faith as a Priority Claim

Insurance insolvency proceedings under the Liquidation Act are designed to equitably distribute limited assets among broad classes of creditors. The statutory priority scheme reflects a legislative judgment about the order in which claimants must be made whole — or as close to whole as the assets allow — when an insurer is insolvent: policyholder claims come before other creditors — general creditors, governmental entities and owners all come later — and only if the prior priority classes are made whole and assets remain.

Bad faith claims are punitive and deterrent in nature and not compensatory in any way. By requiring all claims to be channeled through the liquidation proceeding (K.S.A. 40-3638), and by providing a mandatory priority scheme for distribution (K.S.A. 40-3640), the legislature has plainly signaled that the Liquidation Act — not common law tort doctrine — governs the rights of claimants as against an insolvent insurer's estate. Permitting individual bad faith lawsuits to

proceed outside of the liquidation proceeding would circumvent these statutory provisions and allow certain claimants to obtain preferential recoveries to the detriment of all other similarly situated creditors and policyholders.

The equitable distribution purpose of liquidation precludes preferential recovery. A fundamental principle of insurance insolvency law — reflected in K.S.A. 40-3640 — is that all claimants within the same priority class receive equal treatment and are paid *pro rata* if assets are insufficient to satisfy all claims in full. Allowing a bad faith claimant to recover a punitive award in addition to the policy benefits would give that claimant a preferential recovery over identically situated policyholders whose claims arise under the same policies and the same insolvency.

It is also notable that § 801(C)(5) of IRMA, that section of IRMA which sets forth the priority of claims, expressly addresses “[t]ort claims of any kind against the insurer, and claims against the insurer for bad faith or wrongful settlement practices.” In IRMA’s formulation, tort and bad faith claims are excluded from Class 3 priority, and instead are nonetheless recognized but relegated to lower priority Class 7. This express carve-out is instructive as the drafters, when contemplating whether bad faith claims should be eligible to participate in the distribution of estate assets, answered that question in the affirmative only at a subordinated rung of the claim priority class.

Critically, however, the Kansas legislature did not include bad faith or wrongful settlement practices in any priority class in the Liquidation Act. In fact, only six states adopted the specific language of § 801(C)(5) of IRMA. This means that the express statutory contemplation of bad faith claims as eligible, even in subordinated form, for a distribution of funds from an insurer’s estate represents the decided minority position across the states. The overwhelming majority of

states (44) did not adopt this framework, reflecting a broad legislative consensus *against* the inclusion of bad faith claims as a valid claim against an insurer’s liquidation estate.

The Kansas legislature had the opportunity to make bad faith or wrongful settlement practices a recognizable claim against an insolvent insurance company estate in the Liquidation Act and it elected not to do so. Instead, it adopted a simple mandate that “no claim under a policy of insurance shall be allowed for an amount in excess of the applicable policy limits.” K.S.A. 40-3642(b).

E. The Liquidation Act’s Mandatory Claims Process and Stay Provisions Preclude Bad Faith Claims

A bad faith claim is, by nature, a prospective deterrent remedy designed to change future behavior by imposing costs on a functioning corporate actor. The Kansas Supreme Court has made clear when punitive damages are imposed, public policy demands that the burden fall on the wrongdoer, not on innocent third parties. As the Court held in *Koch v. Merchants Mutual Bonding Co.*, 211 Kan. 397, 405 (1973), “[w]here exemplary damages are awarded for purposes of punishment and deterrence, as is true in this state, public policy should require that payment rest ultimately as well as nominally on the party who committed the wrong; otherwise they would often serve no useful purpose. The objective to be attained in imposing punitive damages is to make the culprit feel the pecuniary punch, not his guiltless guarantor.”

When an insurer is placed into liquidation, no prospective opportunity for bad faith conduct exists. A key policy rationale for bad faith damages is deterrence — to discourage future misconduct by the insurer. An insurer in liquidation is, by definition, winding down its business and will never again be in a position to act as an insurer with respect to the claimant. The deterrence rationale for bad faith liability therefore has no application in the liquidation context.

This principle is further reinforced by Kansas public policy itself, which is oriented toward “prevent[ing] wrongful acts against the citizens of the State of Kansas .” *Hartford Accident & Indem. Co. v. American Red Ball Transit Co.*, 262 Kan. 570 (1997). Redistributing punitive awards among a broad class of creditors who played no role in the underlying misconduct serves none of that purpose. Thus, recognizing and elevating a bad faith claim to Class 2, ahead of policyholders with direct covered losses, would impose the full cost of a deterrent remedy on unrelated creditors who had no part in the insurer’s pre-liquidation alleged misconduct, while delivering none of the deterrent benefit that justifies the remedy. That result is irreconcilable with both the public policy of Kansas as articulated in *Koch* and *Hartford* as well as the distributional purpose of K.S.A. 40-3641.

B. State Insurance Guaranty Association Statutes Expressly Exclude Bad Faith and Punitive Damages Claims

The Liquidation Act, together with Kansas’s guaranty fund statutes, reflects a carefully calibrated legislative framework designed to protect policyholders from the consequences of insurer insolvency while ensuring orderly, equitable distribution of the insolvent insurer’s assets. Specifically, the state insurance guaranty association acts provides a statutory safety net for covered claims against insolvent property and casualty insurers, subject to applicable coverage limits. The guaranty association’s obligations are defined by statute and do not include payment of bad faith or punitive damages. *See* K.S.A. 40-2993 (defining “covered claim,” which typically excludes punitive damages and claims based on bad faith).

IV. Reservation of Rights

The Liquidator recommends to the Court that it approve her denial of the Bad Faith Proofs of Claim listed in Exhibit B for the reasons set forth herein. If the Court approves the Liquidator’s

recommendation, then the Liquidator will move promptly to provide the 13 Bad Faith Proofs of Claim claimants with written notice of her determination. Pursuant to K.S.A. 40-2639, these claimants will have 60 days from the mailing of such notice to file objections with the Liquidator. If objections are filed with the Liquidator and the Liquidator does not alter her determination, the Liquidator shall promptly notify the Court and request a hearing as soon as practicable and give notice as set by the Court of the hearing to the claimant or the claimant's attorney and to any other persons directly affected.

If, on the other hand, the Court disapproves or modifies the Liquidator's recommendation, then the Liquidator notes that she has not reviewed the Bad Faith Proofs of Claim to determine whether any other bases exist to approve or deny these claims or to assess their value, and she reserves her right to conduct a further investigation and consideration of these claims.

WHEREFORE, pursuant to K.S.A. 40-3642, which requires that "the liquidator shall present to the court a report of the claims against the insurer with recommendations thereon", the Liquidator hereby requests that the Court approve her claim recommendations and deny the Bad Faith Proofs of Claim listed in Exhibit B.

Respectively submitted,

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ATTORNEYS FOR PETITIONER

Vicki Schmidt, Commissioner of Insurance

Exhibit A – Bad Faith Proofs of Claim

Claim NO.	POC NO.	Claimant’s Name & Address	Key Policyholder	Policy Limits	Amount Claimed	Amount Claimed in Excess of Limits	Key Payment Paid to Claimant	Policy Claim Submitted to Guaranty Association
KILV115459	1-00079	Elizabeth Stehlik Henderson, NV 89011	Khalil Al Okaibi	\$25,000 occ / \$50,000 agg	\$85,000.00	\$60,000.00	-0-	Yes
KILV151965	1-00352	Darren Grossman c/o Angulo Law Group Las Vegas, NV 89120	Jesus Cortez Vivar	\$25,000 occ / \$50,000 agg	\$2,300,000.00	\$2,275,000.00	-0-	Yes
KIKC107817	1-00418	Silver State Ford as Judicial Assignee of Rights of Virginia Harrelson Las Vegas, NV 89118	Virginia Harrelson	\$10,000 PD	\$57,671.18	\$57,671.18	-0-	Yes
KIKC98045	1-00492	Lucia Covarrubias Maria de Jesus Rodriguez Estate of Oscar Alfredo Ayala Las Vegas, NV 89101	Marisol Torres Esparza	\$15,000 occ / \$30,000 agg	\$1,677,500.00	\$1,677,500.00	\$11,250 Each	Yes
KILV153288	1-00493	Pankaj Kulshrestha Henderson, NV 89015	Claude Carpenter	\$15,000 occ / \$30,000 agg	\$164,900.39	\$149,900.39	-0-	Yes
KIKC148135	1-00657	Melissa Peters Las Vegas, NV 89102	Asher Wiess	\$25,000 occ / \$50,000 agg	\$114,135.14	\$114,135.14	-0-	Yes
KIKC166091	1-00776	Dusti Beckham Great Bend, KS 67530	Shamond Nelson	\$25,000 occ / \$50,000 agg	\$1,018,360.76	\$993,360.76	-0-	No
KIKC166091	1-00777	Heidi Beckham Great Bend, KS 67530	Shamond Nelson	\$25,000 occ / \$50,000 agg	\$3,670,426.51	\$3,645,426.51	-0-	No
KILV129593	1-00779	April Reckling Las Vegas, NV 89148	Gino Giammanco	\$25,000 occ / \$50,000 agg	\$895,353.39	\$895,353.39	\$33,038.27	Yes
KILV100628	1-01251	Cavisha Om & Uniquie Jackson Las Vegas, NV 89147	Adriana Mariscal	\$15,000 occ / \$30,000 agg	TBD	TBD	-0-	Yes
KILV129593	1-01306	April Reckling c/o Lather Law Las Vegas, NV 89121	Gino Giammanco	\$25,000 occ / \$50,000 agg	\$868,085.21	\$868,085.21	\$33,038.27	Yes
KILV117298	1-01383	Nancy Montes Castaneda c/o Big Horn Law Las Vegas, NV 59032	Nancy Montes- Castaneda	\$25,000 occ / \$50,000 agg	\$16,849,381.40	\$16,824,381.40	-0-	Yes

KILV147801	1-01384	Luis Lopez, an individual c/o Clear Counsel Law Group, Henderson, NV 89012	Raymond Nogra	\$25,000 occ / \$50,000 agg	\$32,784,672.63	\$32,784,672.63	\$25,000	No
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Exhibit B – Liquidator’s Recommendations

POC NO.	Claimant’s Name	Claimant’s Address	Key Policyholder	Liquidator’s Recommendation	Amount Allowed
1-00079	Elizabeth Stehlik	Henderson, NV 89011	Khalil Al Okaibi	Deny	-0-
1-00352	Darren Grossman c/o Angulo Law Group	Las Vegas, NV 89120	Jesus Cortez Vivar	Deny	-0-
1-00418	Silver State Ford as Judicial Assignee of Rights of Virginia Harrelson	Las Vegas, NV 89118	Virginia Harrelson	Deny	-0-
1-00492	Lucia Covarrubias Maria de Jesus Rodriguez Estate of Oscar Alfredo Ayala	Las Vegas, NV 89101	Marisol Torres Esparza	Deny	-0-
1-00493	Pankaj Kulshrestha	Henderson, NV 89015	Claude Carpenter	Deny	-0-
1-00657	Melissa Peters	Las Vegas, NV 89102	Asher Wiess	Deny	-0-
1-00776	Dusti Beckham	Great Bend, KS 67530	Shamond Nelson	Deny	-0-
1-00777	Heidi Beckham	Great Bend, KS 67530	Shamond Nelson	Deny	-0-
1-00779	April Reckling	Las Vegas, NV 89148	Gino Giammanco	Deny	-0-
1-01251	Cavisha Om & Uniquie Jackson	Las Vegas, NV 89147	Adriana Mariscal	Deny	-0-
1-01306	April Reckling c/o Lather Law	Las Vegas, NV 89121	Gino Giammanco	Deny	-0-
1-01383	Nancy Montes Castaneda c/o Big Horn Law	Las Vegas, NV 59032	Nancy Montes-Castaneda	Deny	-0-
1-01384	Luis Lopez, an individual c/o Clear Counsel Law Group	Henderson, NV 89012	Raymond Nogera	Deny	-0-