

CAUSE NO. D-1-GN-19-000723

THE STATE OF TEXAS
Plaintiff,

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IN THE DISTRICT COURT OF

v.

TRAVIS COUNTY, TEXAS

CAPSON PHYSICIANS INSURANCE
COMPANY,
Defendant.

250TH JUDICIAL DISTRICT

APPLICATION FOR ORDER OF LIQUIDATION

TO THE HONORABLE JUDGE OF SAID COURT:

CANTILO & BENNETT, L.L.P., Special Deputy Receiver of Capson Physicians Insurance Company (the “SDR” and “CPIC,” respectively), files its *Application for Order of Liquidation* (the “Application”), seeking that the Court enter an order of liquidation and grant the other relief sought herein by the SDR. In support of the Application, the SDR would show the Court the following:

I. AUTHORITY

1.1 On February 11, 2019, the Court entered its *Agreed Order Appointing Rehabilitator, Permanent Injunction and Notice of Automatic Stay* (the “Rehabilitation Order”), placing CPIC, a medical malpractice insurer domiciled in and maintaining a certificate of authority in the State of Texas, into rehabilitation and designating the Texas Commissioner of Insurance as its rehabilitator (the “Commissioner” or the “Rehabilitator”) pursuant to TEX. INS. CODE § 443.101 *et seq.* On that same date, the Rehabilitator appointed CANTILO & BENNETT, L.L.P., as its SDR under TEX. INS. CODE § 443.102(a). The SDR has all the powers of the Rehabilitator pursuant to TEX. INS. CODE § 443.102(a), unless specifically limited by the Rehabilitator.

1.2 The SDR is authorized to file the Application under TEX. INS. CODE § 443.104, which provides that “[w]hen the rehabilitator believes further attempts to rehabilitate an insurer

would substantially increase the risk of loss to creditors, policyholders, or the public or would be futile, the rehabilitator may move for an order of liquidation.” The SDR is also authorized to file the Application pursuant to TEX. INS. CODE § 443.008(a), which, in turn, authorizes the Court to issue any order necessary or appropriate to carry out the provisions of TEX. INS. CODE § 443.151 *et seq.*

1.3 The Court has jurisdiction over the parties and the subject matter of the Application under TEX. INS. CODE § 443.005(c). The exercise of jurisdiction over any non-resident party in interest and/or claimant comports to customary standards of fair play and substantial justice and complies with the protections of the Constitutions of the United States of America and the State of Texas.

1.4 This lawsuit was referred to the Special Master, Tom Collins, in accordance with the *Order of Reference to Master* entered on February 21, 2019. On June 14, 2019, at the SDR’s request, Special Master Collins requested that this Application be heard directly by the District Court.

II. FACTS

2.1 On June 11, 2019, CPIC filed certain financial statements, reflecting its financial condition as of May 31, 2019. The financial statements reflect that, as of that date, CPIC’s liabilities exceeded its admitted assets by at least \$12 million. The SDR has determined that CPIC’s liabilities in all probability will continue to exceed its admitted assets by at least \$12 million, and that CPIC is unable to pay its obligations as they come due in the ordinary course of its business. The SDR therefore submits that CPIC is insolvent as defined insolvent as defined in TEX. INS. CODE § 443.004(a)(13).

2.2 Due to CPIC's noted insolvency, CPIC's financial assets are insufficient to make full payment on its obligations to insureds under its insurance policies. As such, the financial assets of the Company are insufficient to pay any amount on claims of a priority lower than that of its obligations to insureds under its insurance policies. Furthermore, the SDR has determined that it is unable to obtain sufficient reinsurance coverage to pay all of CPIC's outstanding claims. Likewise, the SDR has determined that a runoff of all of CPIC's liabilities cannot be achieved due to the lack of assets and the present and projected expenses of litigation. Accordingly, the SDR has determined that CPIC is no longer able to continue as a viable insurance business.

III. RELIEF REQUESTED

3.1 Considering CPIC is no longer able to continue as a viable insurance business, the SDR believes that further attempts to rehabilitate CPIC would substantially increase the risk of loss to creditors, policyholders, or the public and would be futile.

3.2 Grounds exist to place CPIC into liquidation pursuant to Tex. Ins. Code § 443.057(2), as it is insolvent as defined in TEX. INS. CODE § 443.004(a)(13), and pursuant to TEX. INS. CODE § 443.057(9), in that further transaction of its business would be hazardous to its creditors and the public.

3.3 Accordingly, the SDR moves the Court to enter an order of liquidation UNDER TEX. INS. CODE § 443.104 and § 443.151. In accordance with TEX. INS. CODE § 443.151(a), the order shall appoint the Commissioner as liquidator of CPIC (the "Liquidator"). The SDR requests the Court grant him all powers he is entitled to under the statutes and the common law of the State of Texas, including, but not limited to, TEX. INS. CODE § 443.151 *et seq.*, to conduct the business of CPIC. The SDR also requests that the Liquidator not be required to file a bond as provided by TEX. INS. CODE § 443.008(m).

3.4 The SDR further requests that, pursuant to TEX. INS. CODE § 443.151(a), the Court find CPIC's property of any kind or nature, whether real, personal, or mixed, including but not limited to money, funds, cash, stock, bonds, account deposits, statutory deposits, special deposits, contents of safe deposit boxes, funds held in shared, escrow or trust accounts, retainages and retainers, letters of credit, real estate, fixtures, furniture, equipment, books, records, documents and insurance policies, intellectual property, computer software and systems, information technology, internet domain names, patents and intangible assets, whether owned individually, jointly, or severally, wherever located, and all rights, claims or causes of action belonging to CPIC, and all licenses held by CPIC (collectively, "CPIC's Property"), be vested in the Liquidator.

3.5 The SDR further requests that the Court find that the Liquidator can either assume or reject any executory contract or unexpired lease of CPIC under TEX. INS. CODE § 443.154(w) within a reasonable time after the entry of the order of liquidation. Such assumption or rejection shall be in writing and shall be effective upon delivery. Assumption or rejection shall not be presumed. The right to assume or reject may not be waived or otherwise abrogated.

3.6 The SDR further requests that the Court find that the Liquidator has exclusive authority to exercise any legal remedies available to CPIC. A liquidator is vested with all the rights of an entity in receivership pursuant to TEX. INS. CODE § 443.154(w), including the right to exercise legal remedies available to CPIC.

3.7 The SDR further requests that the Court find it has exclusive jurisdiction over the liquidation and any cases or controversies arising out of or related to the liquidation under TEX. INS. CODE § 443.151(a), unless otherwise agreed to in writing by the parties.

3.8 The SDR further requests that the Court find that an order granting the relief requested in this petition shall not be construed as a limitation on the Commissioner's powers

granted under such provisions. TEX. INS. CODE § 443.001(b) provides that TEX. INS. CODE § 443.151 *et seq.* may not be interpreted to limit the powers granted to the Commissioner under other provisions of law.

IV. NOTICE

4.1 TEX. INS. CODE § 443.007(d) provides that the SDR shall provide notice of an application to all persons on the service list, and any other parties as determined by the SDR. The SDR has determined that notice should be provided to the insurance regulators in the states where CPIC did business and the property and casualty insurance guaranty associations in the states where CPIC did business. Notice of the Application will be provided by electronic mail, where possible, as permitted by TEX. INS. CODE § 443.007(d) and the Rehabilitation Order. Pursuant to TEX. INS. CODE § 443.007(d), inclusion on the service list does not confer standing on any party.

V. OFFER OF PROOF AND VERIFICATION

5.1 The Application is verified by the affidavit and certification under Tex. Ins. Code § 443.017(b) of Michael P. Marcin, designated representative of CANTILO & BENNETT, L.L.P., solely in its capacity as SDR.

VI. STAY OF PROCEEDINGS AND PERMANENT INJUNCTION

6.1 Pursuant to TEX. INS. CODE § 443.008(c), an automatic stay is in effect with respect to actions against CPIC or its property. The automatic stay will remain in effect after the entry of an order of liquidation.

6.2 The Court entered a Permanent Injunction in accordance with TEX. INS. CODE § 443.008(a). The SDR requests that the Permanent Injunction continue in full force and effect after the entry of an order of liquidation.

PRAYER

WHEREFORE, PREMISES CONSIDERED, CANTILO & BENNETT, L.L.P., Special Deputy Receiver of Capson Physicians Insurance Company, respectfully requests:

1. That the Court grant the Application and relief requested;
2. That the Court immediately appoint the Commissioner as liquidator of CPIC and grant him all powers he is entitled to under the statutes and the common law of the State of Texas, including, but not limited to, Tex. Ins. Code § 443.151 *et seq.*, to conduct the business of CPIC;
3. That no bond be required of the Liquidator;
4. That the Court vest the Liquidator with title to CPIC's Property;
5. That the Court find that the Liquidator has exclusive authority to exercise any legal remedies available to CPIC;
6. That the Court find it has exclusive jurisdiction over the liquidation and any cases or controversies arising out of or related to the liquidation, unless otherwise agreed to in writing by the parties;
7. That the Court find an order granting the relief requested in this petition shall not be construed as a limitation on the Commissioner's powers granted under provision of law outside of Tex. Ins. Code § 443.151 *et seq.*;
8. That the Permanent Injunction continue in effect;
9. That the Court authorize the Liquidator to take such other action as necessary to liquidate CPIC; and
10. For any and further relief, both general and specific, in law and in equity, to which the SDR may be entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on June 14, 2019, a true and correct copy of the foregoing *Application for Order of Liquidation* was served pursuant to the *Order of Reference to Master*, the Texas Rules of Civil Procedure and TEX. INS. CODE § 443.007(d) on the following by email, except as specifically otherwise noted:

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