

Jpb JUN 28 2019  
At 10:45 A.M.  
Velva L. Price, District Clerk

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

THE STATE OF TEXAS  
*Plaintiff,*

v.

CAPSON PHYSICIANS INSURANCE  
COMPANY,  
*Defendant.*

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

250<sup>TH</sup> JUDICIAL DISTRICT

**ORDER APPOINTING LIQUIDATOR AND PERMANENT INJUNCTION**

On this day, the Court heard the Application for Order of Liquidation (the "Application") filed by the Special Deputy Receiver (the "SDR") of Capson Physicians Insurance Company ("CPIC"). The Application requests an order placing CPIC into liquidation pursuant to TEX. INS. CODE § 443.151 *et seq.*, appointing the Texas Commissioner of Insurance (the "Commissioner") as liquidator of CPIC ("Liquidator").

The SDR appeared by and through counsel. Having considered the SDR's petition, the evidence presented, and the arguments of counsel, the Court is of the opinion that the Application should be GRANTED.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED as follows:

**I. FINDINGS OF FACT**

1.1 CPIC is a medical malpractice insurer domiciled in and maintaining a certificate of authority in the State of Texas. Therefore, CPIC is a "covered person" as is defined in TEX. INS. CODE § 443.003(4). Accordingly, CPIC is subject to the provisions of TEX. INS. CODE § 443.101 *et seq.*

1.2 CPIC does not have admitted assets at least equal to its liabilities.

1.3 CPIC is unable to pay its obligations as they come due in the ordinary course of its business.



## II. CONCLUSIONS OF LAW

2.1 This Court has jurisdiction over the parties and the subject matter of this action under TEX. INS. CODE § 443.005.

2.2 Grounds have been established to place CPIC into liquidation under TEX. INS. CODE § 443.057. CPIC is insolvent as that term is defined in TEX. INS. CODE § 443.004(a)(13).

2.3 In accordance with TEX. INS. CODE § 443.058, the SDR is entitled to an order of liquidation, and the Commissioner must be appointed as Liquidator of CPIC pursuant to TEX. INS. CODE § 443.151.

2.4 The Liquidator shall be vested by operation of law with title to all of CPIC's property as defined in TEX. INS. CODE § 443.004(a)(20). Such property shall include 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"). The Liquidator's title shall extend to CPIC's Property regardless of where such items are located.

2.5 Pursuant to TEX. INS. CODE § 443.151(a), the Liquidator shall be directed to take possession and control of CPIC's Property.

2.6 Upon the designation of CPIC as an "impaired insurer" as defined in TEX. INS. CODE § 462.004(5), the Texas Property and Casualty Insurance Guaranty Association shall



become responsible for paying "covered claims" of CPIC as provided in TEX. INS. CODE § 462.001 *et seq.* Upon the entry of this order, similar organizations in other states will become responsible for paying "covered claims" of CPIC as provided by their governing statutes. The guaranty associations shall be entitled to any records necessary to fulfill these duties and obligations.

2.7 The Liquidator may take any action as he deems necessary or appropriate to perform his duties pursuant to TEX. INS. CODE § 443.151. The Liquidator shall have all the powers of CPIC's directors, officers, and managers, and the authority of such persons is suspended except as specifically permitted by the Liquidator or his designees.

2.8 CPIC and CPIC's agents shall be required to cooperate with the Liquidator and his designees pursuant to TEX. INS. CODE § 443.010.

2.9 TEX. INS. CODE § 443.001(b) provides that TEX. INS. CODE § 443.101 *et seq.* may not be interpreted to limit the powers granted to the Commissioner under other provisions of law. Accordingly, this Order Appointing Liquidator shall not be construed as a limitation of the Commissioner's powers granted under such provisions.

### **III. APPOINTMENT OF LIQUIDATOR**

The Commissioner is appointed as Liquidator of CPIC, and granted the following duties and powers:

3.1 The Liquidator is granted and given all powers and authority under TEX. INS. CODE § 443.151 *et seq.*, and all other powers and authority under applicable statutes and the common law of the State of Texas.

3.2 Pursuant to TEX. INS. CODE § 443.151(a), title to CPIC's Property, including, but not limited to, all of the assets and rights described in this Order Appointing Liquidator, is exclusively vested in the Liquidator.





3.3 Pursuant to TEX. INS. CODE § 443.151(a), the Liquidator is directed to take control and possession of CPIC's Property, wherever located. The Liquidator is authorized to withdraw CPIC's Property from any banks, financial institutions, and other depositories, agencies of any state or the federal government, and any other entities, or continue the operation of any accounts of CPIC, at his discretion. The Liquidator is exclusively vested by operation of law with the rights of CPIC as the customer of any financial institution.

3.4 The Liquidator is exclusively authorized to conduct CPIC's business, administer CPIC's operations, and enter into any contracts necessary to perform the Liquidator's duties, at his discretion pursuant to TEX. INS. CODE § 443.154.

3.5 The Liquidator is exclusively authorized to supervise, suspend, terminate, or dismiss any or all of the agents, employees, officers, and/or directors of CPIC or retain such persons at his discretion, and compensate them as he deems necessary from CPIC's funds.

3.6 The Liquidator is authorized to exclude any person from any property owned, leased, or occupied by CPIC, at his discretion.

3.7 The Liquidator is authorized to either assume or reject any executory contract or unexpired lease of CPIC under TEX. INS. CODE § 443.154(k). 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.

3.8 The Liquidator shall be exclusively vested with all legal remedies available to CPIC pursuant to TEX. INS. CODE § 443.154(w). The Liquidator is exclusively authorized to file, prosecute, defend, or settle any action as he deems necessary, including any action to enforce the provisions of this Order Appointing Liquidator.



3.9 The Liquidator is exclusively authorized to receive, collect, control, open, and review all mail addressed to or intended for CPIC, or arriving at CPIC's address.

3.10 The Liquidator is authorized to appoint a special deputy and retain any other professional, administrative, and clerical services as he deems necessary pursuant to TEX. INS. CODE § 443.154(a). The Liquidator is further authorized to set the compensation of such persons and pay for such services from CPIC's funds pursuant to TEX. INS. CODE § 443.015(e). The Liquidator's designees and any special deputy appointed under TEX. INS. CODE § 443.154(a) shall have all the rights and powers of the Liquidator, subject to any limitations imposed by the Liquidator.

3.11 Pursuant to TEX. INS. CODE § 443.008(m), no bond is required by the Commissioner.

3.12 In the event a successor is appointed to be the Commissioner, the successor shall become the Liquidator upon his appointment as Commissioner, and the former Commissioner shall be discharged as Liquidator as a matter of law.

#### IV. PERMANENT INJUNCTION

The Clerk of this Court shall issue a Permanent Injunction against the persons and entities named below, with the following force and effect:

TO: CPIC and its agents, including but not limited to:

CPIC's current and former officers, directors, underwriters, managers, and agents including Sandra Coultress Wilson, Douglas S. Colosky, Jon M. Foster, John A. Dieck, Jr., Nancy S. Dunlap, William H. Rice, Matthew J. Downs, Chasity D. Norman, Michelle L. Wise, Daniel Jensen, Laura A. Cook, Gary Fortin, Scott A. Artman, Dawn A. Liesmann, Sharon L. Addicks, Beth W. Kropf, Julie A. Gibson, Travis Huroskey, Brianne N. Bailey, Joseph C. Phillips, Sandra L. Erwin, Mandi Shahvandi, Sarah R. Moses, Cindy Corbett, Jay Staub, Sharon Wilson, Gurpreet Khasriya, Wanda Harris, W. Thomas Cotten, Perr & Knight, Aon, Calhoun Thompson + Matza, Thompson & Coe, 9 Gauge, 360 Internet Marketing (d/b/a



Apogee), Creative Circle, Raymond James, and Jay Tidy); owners and affiliates (including but not limited Kenneth Zagorski, Independent Administrator of Maury Magids, deceased, Lisa M. Magids, Beazley Investment, Ltd., BlueCross BlueShield Venture Partners, L.P., Sandbox Co-Investment Fund I, L.P., Capson Healthcare Services, Inc. (d/b/a Capson Healthcare and/or Capson Tech), Capson Physicians Insurance Agency, Inc., and Capson Corp.); representatives, associates, servants, adjusters, attorneys and accountants (including but not limited to those acting in concert with them);

Financial institutions, including but not limited to:

any and all banks, savings and loan associations; trust companies; credit unions; welfare trusts; or any other financial or depository institutions in the possession of any of CPIC's Property (including but not limited to JPMorgan Chase, and US Bank); and

All other parties, including but not limited to:

policyholders, creditors, claimants, reinsurers, insurers, intermediaries, attorneys and all other persons, associations, corporations, or any other legal entities asserting claims or causes of action against CPIC, or in possession of any of CPIC's Property, and the United States Postmaster.

Each of you are hereby RESTRAINED and ENJOINED from taking any and all of the following actions:

4.1 Doing, operating, or conducting CPIC's business under any charter, certificate of authority, license, permit, power or privilege belonging to or issued to CPIC, or exercising any direction, control, or influence over CPIC's business, except through the authority of the Liquidator or his designees;

4.2 Transacting any business of CPIC's in any manner except through the authority of the Liquidator or his designees;

4.3 Wasting, disposing of, converting, dissipating, or concealing, in any manner, any of CPIC's Property;





4.4 Using, releasing, transferring, selling, assigning, canceling, hypothecating, withdrawing, allowing to be withdrawn, offsetting, asserting ownership of, concealing, in any manner, or removing from this Court's jurisdiction or from CPIC's place of business, any of CPIC's Property, or any other items purchased by CPIC, or any items into which such property has been transferred, deposited or placed, or any other items owned by CPIC, wherever located, except through the authority of the Liquidator or his designees;

4.5 Releasing, transferring, selling, assigning or asserting ownership of, in any manner, any claims, accounts receivable, or causes of action belonging to CPIC, whether asserted or not, except through the authority of the Liquidator or his designees;

4.6 Doing anything, directly or indirectly, to prevent the Liquidator or his designee from gaining access to, acquiring, examining, or investigating any of CPIC's Property or any other property, books, documents, records, or other materials concerning CPIC's business, under whatever name they may be found;

4.7 Obstructing or interfering in any way with the conduct of this proceeding or any incidental investigation as prohibited by TEX. INS. CODE § 443.010(b);

4.8 Intervening in this proceeding for the purpose of obtaining a payment from the receivership estate of CPIC as prohibited by TEX. INS. CODE § 443.005(i);

4.9 Making any claim, charge or offset, or commencing or prosecuting any action, appeal, or arbitration, including administrative proceedings, or obtaining any preference, judgment, attachment, garnishment, or other lien, or making any levy against CPIC, CPIC's Property or any part thereof, or against the Liquidator, except as otherwise permitted by the Insurer Receivership Act.



EACH OF YOU ARE FURTHER SPECIFICALLY ORDERED to make available and disclose to the Liquidator or his designee the nature, amount, and location of CPIC's Property, and immediately surrender all such property to the Liquidator or his designee.

CPIC AND CPIC'S AGENTS ARE FURTHER ORDERED to cooperate with the Liquidator or his designees as required by TEX. INS. CODE § 443.010(a).

IT IS FURTHER ORDERED that the United States Postmaster and any other delivery services shall deliver to the Liquidator any items addressed to or intended for CPIC.

#### V. AUTOMATIC STAY

5.1 Pursuant to TEX. INS. CODE § 443.008(c), the automatic stay continues in effect with respect to actions against CPIC or its property. In accordance with TEX. INS. CODE § 443.008(f), such stay of actions against CPIC is in effect for the duration of this proceeding, and the stay of actions against Defendant's property is in effect for as long as the property belongs to the receivership estate.

#### VI. CONTINUATION OF COVERAGE

6.1 Unless further extended by the Liquidator with the approval of this Court pursuant to TEX. INS. CODE § 443.152(b), all policies and insurance contracts issued by CPIC in effect at the time of issuance of this order shall continue in force only until the earlier of:

- (a) the 30<sup>th</sup> day after the date of entry of this order;
- (b) the date of expiration of the policy coverage; or
- (c) the date the insured has replaced the policy or otherwise terminated the policy.
- (d) the date the insured has replaced the policy or otherwise terminated the policy.





6.2 Such policies and insurance contracts issued by CPIC include any and all types of insurance coverage, including but not limited to any obligation by CPIC to provide "tail" coverage or "extended reporting period" coverage for claims arising after the termination of a policy.

6.3 Pursuant to TEX. INS. CODE § 443.152(a) all reinsurance contracts by which CPIC has assumed the insurance obligations of another insurer are canceled upon entry of this order.

## VII. OTHER ORDERS

7.1 This Order shall issue and become effective immediately and shall continue in full force and effect until the entry of an order by this Court terminating liquidation entered under TEX. INS. CODE § 443.352.

7.2 Pursuant to TEX. INS. CODE § 443.055, this Order constitutes a final judgement, provided that this Court shall retain jurisdiction to issue further orders pursuant to the Insurer Receivership Act.

7.3 In accordance with TEX. INS. CODE § 443.001(b), this Order shall not be construed to limit the rights of the Commissioner or the Texas Department of Insurance to take any administrative action or issue any administrative order pursuant to the Texas Insurance Code.

7.4 This Court shall have exclusive jurisdiction over this proceeding or relief relating to this proceeding pursuant to TEX. INS. CODE § 443.005(a), and of CPIC's Property, wherever located, pursuant to TEX. INS. CODE § 443.005(b).

7.5 In accordance with TEX. INS. CODE § 443.007(d), the Liquidator may provide notice of any application by first class mail, electronic mail, or facsimile transmission, at her or its discretion.


7.6 Anyone over the age of 18 whom is neither a party to nor interested in the outcome of this suit may serve all citations, writs, and notices in this cause.



7.7 Nothing in this Order adjudicates any disputes or precludes any claim regarding the rights to the proceeds of any key man life insurance policies covering Maury L. Magids.

7.8 All of the foregoing is subject to further orders of the Court.

Signed this 28<sup>th</sup> day of JUNE 2019.

  
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JUDGE PRESIDING  
**TIM SULAK**

Approved; signing and entry requested:

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**Attorneys for CANTILO & BENNETT, LLP,  
Special Deputy Receiver of  
Capson Physicians Insurance Company**

I, **VELVA L. PRICE**, District Clerk,  
Travis County, Texas, do hereby certify that this is  
a true and correct copy as same appears of  
record in my office. Witness my hand and seal of  
office on



6-28-2019  
**VELVA L. PRICE**  
**DISTRICT CLERK**  
By Deputy:



