

STATE OF SOUTH CAROLINA
RICHLAND COUNTY

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Raymond G. Farmer, as Director of the
South Carolina Department of Insurance,

Petitioner,

vs.

Oceanus Insurance Company, a Risk
Retention Group

Respondent.

Civil Action No. 2017-CP-40-05195

**ORDER
COMMENCING LIQUIDATION
PROCEEDINGS & GRANTING
AN INJUNCTION &
AUTOMATIC STAY OF
PROCEEDINGS**

This matter comes before me pursuant to the South Carolina Insurers Supervision, Rehabilitation and Liquidation Act, S.C. Code Ann. §§ 38-27-10 *et seq.* Petitioner, Raymond G. Farmer, as Director of the South Carolina Department of Insurance, by and through counsel, has petitioned the Court for an Order appointing him as Liquidator of Respondent, Oceanus Insurance Company, a Risk Retention Group. The instant Petition was filed and served on Respondent on August 31, 2017. Respondent has reasonable notice of the Petition pursuant to Section 38-27-60 of the Code of Laws of South Carolina 1976, as amended; and, Respondent's Board of Directors has proffered no objection to the Petition being granted and waives hearing on this matter.

The Court, having reviewed the filings of record and otherwise being fully informed in the premises, finds:

1. This Court has jurisdiction of the subject matter and is the proper venue for this proceeding pursuant to S.C. Code Ann. § 38-27-60(b), (c) & (f) & -360 (2015).



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JENNIFER W. ALBRITTON
C.C.P. & G.C.C.
RICHLAND COUNTY
CLERK OF COURT

2. Petitioner is the duly appointed Director for the State of South Carolina Department of Insurance with such powers, duties and responsibilities as are prescribed under the insurance laws of this State to that agency's director for company licensing, delinquency and receivership matters, and is specifically authorized to file a petition for liquidation pursuant to S.C. Code Ann. § 38-27-360 (2015).

3. The Department has regulatory jurisdiction over the Respondent pursuant to, *inter alia*, Chapters 3, 87 and 90 of Title 38 of the South Carolina Code of Laws 1976, as amended.

4. Respondent is a South Carolina Industrial Insured Captive (stock) Corporation formed as a risk retention group, organized and licensed pursuant to Chapters 87 and 90 of Title 38 of the South Carolina Code, and is owned and capitalized by its insured physician and physician group members.

5. Respondent was licensed on September 24, 2004 and commenced writing business with Department authorization on February 18, 2005.

6. Under Respondent's approved business plan, member-insureds are physician's groups and individual practitioners throughout the United States.

7. Respondent issues non-assessable medical malpractice professional insurance policies with primary coverage up to \$1,000,000 per occurrence with \$3,000,000 in the aggregate. Excess limits are provided above the primary coverage and are fully reinsured. For the 2014-2015 and 2015-2016 policy years, Respondent retains \$450,000 on the primary policy and cedes the remainder to reinsurers. Retention decreases to \$350,000 in 2016-2017. Respondent currently has no reinsurance for policy years prior to 2014-2015.



8. Respondent is required by the Department to maintain minimum capital and surplus of \$10,000,000 on a modified GAAP basis.

9. S.C. Code Ann. § 38-27-360 sets forth the following grounds upon which an insurer may be placed into liquidation:

a. Any ground for an order of rehabilitation as specified in S.C. Code Ann. § 38-27-310 (2015), whether or not there has been a prior order directing the rehabilitation of the insurer, including the board of directors or the holders of a majority of the shares entitled to vote request or consent to liquidation;

b. The insurer is insolvent; or

c. The insurer is in such a condition that the further transaction of business would be hazardous, financially or otherwise, to its policyholders, its creditors, or the public.

10. Petitioner has alleged in its Petition that Respondent is in a condition in which the further transaction of business would be hazardous, financially or otherwise, to its policyholders, creditors, or the public and that it is insolvent as defined in S.C. Code Ann. § 38-27-50(10) (2015), both of which constitute grounds for the commencement of liquidation, as set forth in Section 38-27-360.

11. It is in the best interest of Respondent, its policyholders, its creditors and the public that the relief requested be granted.

IT IS THEREFORE ORDERED THAT:

1. PURSUANT TO S.C. Code Ann. § 38-27-370 (2015), Petitioner and his successors in office are appointed Liquidator of Respondent.

2. PURSUANT TO S.C. Code Ann. § 38-27-370(B) (2015), the rights and liabilities



of the insurer and its creditors, policyholders, shareholders, members, and other persons interested in its estate become fixed as of the date of entry of the order of liquidation, except as provided in S.C. Code Ann. §§ 38-27-380 and 38-27-560 (2015); and, any claim excepted under this provision and Section 38-27-370(B) shall be governed by Sections 38-27-380 and 38-27-560, as applicable.

2. PURSUANT TO S.C. Code Ann. § 38-27-400(a) (2015), Petitioner and his successors shall have all the powers and responsibilities set forth under that section to assist him or his designee as Liquidator, including but not limited to:

a. To appoint a special deputy to act for him and to determine the special deputy's reasonable compensation, who shall have all powers of the Liquidator granted by this section and who serves at the pleasure of the Liquidator.

b. To employ employees and agents, legal counsel, actuaries, accountants, appraisers, consultants, and other personnel he considers necessary to assist in the liquidation.

c. To fix the reasonable compensation of employees and agents, legal counsel, actuaries, accountants, appraisers, and consultants with the Court's approval.

d. To pay reasonable compensation to persons appointed and to defray from the funds or assets of the insurer all expenses of taking possession of, conserving, conducting, liquidating, disposing of, or otherwise dealing with the business and property of Respondent. In the event that Respondent's property does not contain sufficient cash or liquid assets to defray the costs incurred, the Director may advance the costs so incurred out of any appropriation for the maintenance of the Department of Insurance. Any amounts so advanced for expenses of administration must be repaid to the Director for the use of the Department out of the first



available monies of the insurer.

e. To hold hearings, to subpoena witnesses to compel their attendance, to administer oaths, to examine any person under oath, and to compel any person to subscribe to his testimony after it has been correctly reduced to writing and, in connection therewith, to require the production of any books, papers, records, or other documents which he considers relevant to the inquiry.

f. To collect all debts and monies due and claims belonging to Respondent, wherever located, and, for this purpose:

(i) To institute timely action in other jurisdictions in order to forestall garnishment and attachment proceedings against the debts.

(ii) To do other acts necessary or expedient to collect, conserve, or protect its assets or property, including the power to sell, compound, compromise, or assign debts for purposes of collection upon terms and conditions he considers best.

(iii) To pursue any creditor's remedies available to enforce his claims.

g. To conduct public and private sales of the property of Respondent.

h. To use assets of the estate of Respondent to transfer policy obligations to a solvent assuming insurer, if the transfer can be arranged without prejudice to applicable priorities under S.C. Code Ann. § 38-27-610 (2015).

i. To acquire, hypothecate, encumber, lease, improve, sell, transfer, abandon, or otherwise dispose of or deal with any property of Respondent at its market value or upon terms and conditions that are fair and reasonable. He also has power to execute, acknowledge,



and deliver any and all deeds, assignments, releases, and other instruments necessary or proper to effectuate any sale of property or other transaction in connection with the liquidation.

j. To borrow money on the security of Respondent's assets or without security and to execute and deliver all documents necessary to that transaction for the purpose of facilitating the liquidation.

k. To enter into contracts necessary to carry out the order to liquidate, and to affirm or disavow any contracts to which the insurer is a party.

l. To continue to prosecute and to institute in the name of Respondent or in his own name any and all suits and other legal proceedings, in this State or elsewhere, and to abandon the prosecution of claims he considers unprofitable to pursue further. If Respondent is dissolved under S.C. Code Ann. § 38-27-390 (2015), he has the power to apply to any court in this State or elsewhere for leave to substitute himself for Respondent as plaintiff.

m. To prosecute any action which may exist in behalf of the creditors, members, policyholders, or shareholders of Respondent against any officer of Respondent or any other person.

n. To remove any or all records and property of Respondent to the offices of the Department or to any other place convenient for the purposes of efficient and orderly execution of the liquidation, *provided* that guaranty associations and foreign guaranty associations shall have such reasonable access to the records of Respondent as is necessary for them to carry out their statutory obligations.

o. To deposit in one or more banks in this State sums required for meeting



current administration expenses and dividend distributions.

p. To invest all sums not currently needed, unless the Court orders otherwise.

q. To file any necessary documents for recording in the office of any recorder of deeds or record office in this State or elsewhere where property of Respondent is located.

r. To assert all defenses available to Respondent as against third persons, including statutes of limitation, statutes of fraud, and the defense of usury. A waiver of any defense by Respondent after a petition in liquidation has been filed does not bind the Liquidator. Whenever a guaranty association or foreign guaranty association has an obligation to defend any suit, the Liquidator shall give precedence to that obligation and may defend only in the absence of a defense by the guaranty associations.

s. To exercise and enforce all the rights, remedies, and powers of any creditor, shareholder, policyholder, or member, including any power to avoid any transfer or lien that may be given by the general law and that is not included with S.C. Code Ann. §§ 38-27-450 through 38-27-470 (2015).

t. To intervene in any proceeding wherever instituted that might lead to the appointment of a receiver or trustee and to act as the receiver or trustee whenever the appointment is offered.

u. To enter into agreements with any receiver or commissioner of any other state relating to the rehabilitation, liquidation, conservation, or dissolution of an insurer doing business in both states.



v. To exercise all powers now held or hereafter conferred upon receivers by the laws of this State not inconsistent with applicable law.

w. To audit the books and records of agents of Respondent insofar as those records relate to the business activities of the insurer.

x. Notwithstanding the powers of the Liquidator as enumerated above and granted pursuant to Section 38-27-400, the Liquidator is not obligated to defend claims or to continue to defend claims after the entry of a liquidation order.

3. PURSUANT TO S.C. Code Ann. § 38-27-400(b) (2015), the enumeration in this Order of the powers and authority of the Liquidator may not be construed as a limitation upon him; nor shall it exclude in any manner his right to do other acts not herein specifically enumerated, or otherwise provided for, that may be necessary or appropriate for the accomplishment of or in aid of the purpose of liquidation.

4. PURSUANT TO S.C. Code Ann. §§ 38-27-410, -540 & -550 (2015), the Liquidator shall provide Notice of this Order, prescribe the form of a Proof of Claim to be used by all claimants and shall set the date for submission of claims, or Bar Date, after which no claim will be allowed except as provided in Section 38-27-540; and, said Bar Date shall be no later than one-hundred and eighty (180) days from the date of entry of this Order, unless the 180th day of the period so computed is a Saturday, Sunday or a State or Federal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor such holiday.

5. PURSUANT TO S.C. Code Ann. § 38-27-370(E) (2015), the Liquidator shall submit periodic accountings to the Court, with the first such accounting to be filed no more than



180 days after the date of this Order and with subsequent accountings to be made on a semiannual basis for each calendar year.

6. Continuation and cancellation of coverage shall be governed by S.C. Code Ann. § 38-27-380(b) (2015).

7. Upon filing by the Liquidator with the office of the Secretary of State a certified true copy of the Liquidation Order, Respondent is dissolved in accordance with S.C. Code Ann. § 38-27-390 (2015).

8. Respondent is hereby officially declared insolvent as defined by S.C. Code Ann. § 38-27-50(10) (2015).

9. Petitioner's designation of Michael J. FitzGibbons of FitzGibbons and Company, Inc., 9821 N. 95th St., Suite 105, Scottsdale, Arizona 85258, as a consultant to the Liquidator and as Special Deputy Liquidator, in this matter, with such reasonable compensation as determined by the Liquidator pursuant to S.C. Code Ann. § 38-27-400(a)(1) (2015) is hereby expressly approved, and said Special Deputy Liquidator shall have all powers of the Liquidator granted by S.C. Code 38-27-400 (2015) and this Order and shall serve at the pleasure of the Liquidator.

NOTICE OF INJUNCTION AND AUTOMATIC STAY

Notice is hereby given that pursuant to S.C. Code Ann. §§ 38-7-70 & -430 (2015), the Court grants an injunction and automatic stay applicable to all persons and proceedings, other than the Liquidator, which shall be permanent and survive the entry of the Order and which prohibits:

- 1) The transaction of further business;
- 2) The transfer of property;

3) Interference with the Liquidator or with a proceeding under Chapter 27 of Title 38 of the Code;

4) Waste of the insurer's assets;

5) Dissipation and transfer of bank accounts;

6) The institution or further prosecution of any actions or proceedings;

7) The obtaining of preferences, judgments, attachments, garnishments, or liens against the insurer, its assets, or its policyholders;

8) The levying of execution against the insurer, its assets, or its policyholders;

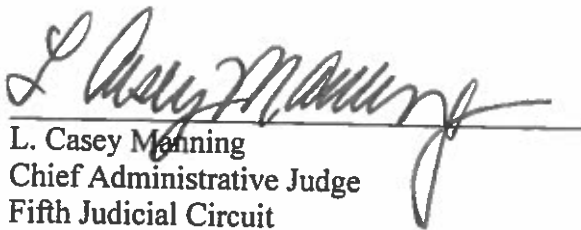
9) The making of any sale or deed for nonpayment of taxes or assessments that would lessen the value of the assets of the insurer;

10) The withholding from the receiver or books, accounts, documents, or other records relating to the business of the insurer; or

11) Any other threatened or contemplated action that might lessen the value of the insurer's assets or prejudice the rights of policyholders, creditors, or shareholders, or the administration of any proceeding under Chapter 27 of Title 38 of the South Carolina Code.

This Court retains jurisdiction of this cause for the purpose of granting such other and further relief as from time to time may be necessary and appropriate.

AND IT IS SO ORDERED.


L. Casey Manning
Chief Administrative Judge
Fifth Judicial Circuit

This 21 day of Sept., 2017

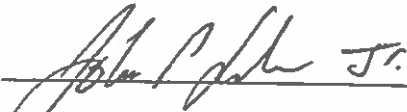
Columbia, South Carolina

FOR PETITIONER:



Geoffrey R. Bonham
One of the Attorneys for the Petitioner

**ACKNOWLEDGED FOR RESPONDENT, OCEANUS
INSURANCE COMPANY, A RISK RETENTION GROUP:**



BY: John P. Seibels, Jr

ITS: Council of Record
