

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,

Civil Action No. 2017-CP-40-05195

Petitioner,

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

vs.

Oceanus Insurance Company, a Risk
Retention Group

Respondent.

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).

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,

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