

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

250TH JUDICIAL DISTRICT

**SPECIAL DEPUTY RECEIVER’S APPLICATION TO EXTEND THE STAY AND
REQUEST FOR EXPEDITED HEARING**

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 to Extend the Stay and Request for Expedited Hearing* (the “Application”).

I. INTRODUCTION

1. The SDR seeks an order from the Court extending the stay created by TEX. INS. CODE § 443.008(d) until June 26, 2019, and requests that the application be heard on May 8, 2019.

II. BACKGROUND

2. This proceeding was commenced on February 11, 2019. The Court entered an *Agreed Order Appointing Rehabilitator, Permanent Injunction, and Notice of Automatic Stay* appointing the Texas Commissioner of Insurance as Rehabilitator (the “Rehabilitator”). Effective February 11, 2019, the Texas Commissioner of Insurance, as Rehabilitator, designated CANTILO & BENNETT, L.L.P. as Special Deputy Receiver of CPIC.

3. Pursuant to TEX. INS. CODE § 443.008(d), the commencement of this proceeding operated as a 90-day stay of litigation against insureds of CPIC. That 90-day stay is set to expire on May 12, 2019.

III. JURISDICTION AND AUTHORITY

4. This Court has jurisdiction over the subject matter of this Application and of the parties herein pursuant to TEX. INS. CODE § 443.005.

5. The SDR is authorized to file this Application pursuant to TEX. INS. CODE § 443.008. In accordance with TEX. INS. CODE § 443.102, the SDR has all of the powers of the Rehabilitator.

6. The subject matter of this Application has been referred to the Master appointed in this proceeding in accordance with the Order of Reference to Master entered on February 21, 2019.

IV. RELIEF SOUGHT

A. Extension of Automatic Stay

7. Pursuant to TEX. INS. CODE § 443.008(d), for good cause shown, the Court may enter an order extending the stay. Accordingly, the SDR moves the Court to enter an order extending the stay until June 28, 2019.

8. The SDR has worked diligently to identify CPIC assets available to support a plan of rehabilitation for the company. The SDR's review has uncovered a significant asset owned by CPIC but held and claimed by third parties, including, but not limited to, CPIC's parent company, Capson Corp. Through negotiation, the SDR is attempting to marshal that asset to support a rehabilitation plan for CPIC. However, the SDR requires additional time to do so.

9. Once the stay expires, the SDR will be forced to devote a considerable amount of time and resources to currently stayed litigation across multiple states. Should the stay expire prior to the SDR's marshalling of the identified asset, CPIC will incur substantial additional costs associated with defense of such litigation - a financial strain that will very likely prevent successful rehabilitation. This potential outcome is contrary to the interests of the public, CPIC's

policyholders, and CPIC's creditors. An extension of the stay until June 28, 2019, will not harm the public, CPIC's policyholders, or CPIC's creditors. Instead, it will maintain the status quo for a few additional weeks while giving the SDR greater opportunity to successfully rehabilitate the company to ensure that policy obligations are paid in full.

B. Expedited Hearing

10. Additionally, since the automatic stay of suits against CPIC insureds expires on May 12, 2019, the SDR requests that this matter be considered on an expedited basis under the Order of Reference to Master, which permits the SDR to request an expedited hearing for good cause. TEX. INS. CODE § 443.008(d) allows this receivership court to extend the automatic stay after "any hearing the receivership court determines is appropriate." As detailed above, allowing the stay to expire will require the SDR to turn his focus to the ongoing defense of more than 100 matters currently filed against CPIC insureds rather than recovering assets necessary to rehabilitate CPIC. If the stay is allowed to expire, and then is reinstated, the SDR believes courts in other states that have thus far honored the stay may be reluctant to continue to do so. The relief requested from the Court serves the interests of all parties to these stayed proceedings – by preserving assets necessary to pay any benefits owed under CPIC policies, and by allowing the SDR to complete his work to augment those assets and propose a plan of rehabilitation. The SDR respectfully requests that this matter be set for hearing on May 8, 2019, and enter an order extending the stay until June 28, 2019.

V. OFFER OF PROOF

11. This Application is verified by the affidavit and certification pursuant to TEX. INS. CODE § 443.017(b) of Joseph N. West, designated representative of CANTILO & BENNETT, L.L.P., solely in its capacity as Special Deputy Receiver of Capson Physicians Insurance Company.

VI. NOTICE

12. The SDR has served this Application to all known affected parties by regular mail, e-mail, fax, hand delivery, and/or overnight delivery. Pursuant to the Order Granting Special Deputy Receiver's Application to Require Electronic Service of Pleadings and Notices, all pleadings filed in response to this Application or in regard to this estate shall be served by e-mail on the undersigned counsel and all parties shown in the attached Certificate of Service.

PRAYER

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

1. Grant this Application;
2. Order that the automatic stay created by TEX. INS. CODE § 443.008(d) is extended until June 28, 2019; and
3. Grant the SDR such other and further relief to which it may be justly entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on May 3, 2019, a true and correct copy of the foregoing *Special Deputy Receiver's Application to Extend the Stay and Request for Expedited Hearing* was served pursuant to the Order of Reference to Master, the Texas Rules of Civil Procedure and TEX. INS. CODE 443.007(e) on the following by e-mail, except as specifically otherwise noted. Additionally, the foregoing Application to Extend the Stay and for Expedited Hearing was served on the known affected parties listed on the attached Exhibit A (via e-mail).

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APPLICANT'S NOTICE OF EXPEDITED HEARING

Pursuant to the terms of the Order of Reference to Master entered by the District Court in this cause, the SDR's *Application to Extend the Stay and Request for Expedited Hearing* is hereby set before the Special Master, Tom Collins, on May 8, 2019 at 9:00 a.m.

The Special Master has asked that the following rules be provided you:

1. Any objection must be filed with the Travis County District Clerk at least three (3) calendar days before the submission date.
2. A copy of any objection shall be served by e-mail by such date on:
 - (a) The Special Master's Docket Clerk, at specialmasterclerk@tdi.texas.gov;
 - (b) The undersigned counsel, Greg Pierce at gpierce@gpiercelaw.com; and
 - (c) All interested parties, including those listed on the SDR's Certificate of Service.
3. The objecting party shall coordinate with the SDR's counsel and the Docket Clerk [(512) 676-6915]] to obtain an oral hearing setting for argument on the Application and Objection, and complete and attach an "Objecting Party's Notice of Oral Hearing" to the objection.
4. The written objection must specifically list all reasons for objection with supporting references to and discussion of statutory and case authorities. Reasons not stated in writing will not be considered orally.
5. **Please note that if an objection is not filed as described in the Notice of Submission, the Master may consider the Application without a hearing.**
6. **Failure to file timely a written objection before the Special Master constitutes a waiver of the right to object to the Special Master's recommendation to the District Court.**
7. Any Acknowledgment of Notice and Waiver to be filed by the Guaranty Association or other interested party should be filed at least three (3) calendar days before the submission or hearing date.

/s/ Greg Pierce
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