

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

|                             |   |                                     |
|-----------------------------|---|-------------------------------------|
| THE STATE OF TEXAS          | § | IN THE DISTRICT COURT OF            |
| <i>Plaintiff,</i>           | § |                                     |
|                             | § |                                     |
| v.                          | § | TRAVIS COUNTY, TEXAS                |
|                             | § |                                     |
| CAPSON PHYSICIANS INSURANCE | § |                                     |
| COMPANY,                    | § |                                     |
| <i>Defendant.</i>           | § | 250 <sup>TH</sup> JUDICIAL DISTRICT |

**SPECIAL DEPUTY RECEIVER’S APPLICATION  
TO APPROVE SALE OF CHARTER AND CERTIFICATES OF AUTHORITY**

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 this *Application to Approve Sale of Charter and Certificates of Authority* (the “Application”), and shows the following:

**I. INTRODUCTION**

1.1 The SDR seeks approval of an agreement to sell the charter of CPIC to Ag Workers Mutual Auto Insurance Company (“Ag Workers”) pursuant to TEX. INS. CODE § 443.153. A true and correct copy of the Purchase Agreement (the “Agreement”) is attached as **Exhibit 1**. In summary, the Agreement provides for Ag Workers to pay to the SDR the sum of \$100,000.00 for the charter and all certificates of authority held by CPIC. Ag Workers will not assume any liabilities of CPIC and will not receive any assets of CPIC (other than the charter and certificates of authority).

**II. BACKGROUND AND JURISDICTION**

2.1 CPIC was placed in receivership for rehabilitation in this proceeding on February 11, 2019. The Receiver designated Cantilo & Bennett, L.L.P. as SDR on that same date. Subsequently, on June 28, 2019, the Court entered its *Order Appointing Liquidator and Permanent Injunction* (the “Permanent Injunction”).

2.2. This Court has jurisdiction over the subject matter of this Application and of the parties and property affected herein pursuant to TEX. INS. CODE § 443.005. The Court has personal jurisdiction over all claimants against the assets of the receivership estate of CPIC ("Claimants") because this is a civil proceeding arising under and related to a delinquency proceeding under Chapter 443 of the Texas Insurance Code (the "Code"), the transactions and occurrences which form the basis for the proceeding occurred, in whole or in part, in this state, because the Claimants fall under the Court's statutory personal jurisdiction set out in TEX. INS. CODE § 443.005(d) and TEX. CIV. PRAC. & REM. Code Chapter 17, alternatively, because the Claimants reside and/or conduct business in this state that is directly related to the subject matter of this proceeding, and because the exercise of jurisdiction over any non-resident 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.

2.3. The SDR is authorized to file this Application pursuant to TEX. INS. CODE § 443.153.

2.4. The subject matter of this Application has been referred to the Special Master appointed in this proceeding in accordance with Paragraph II of the *Supplemental Order of Reference to Master* entered on September 18, 2019.

### **III. THE AGREEMENT**

3.1 TEX. INS. CODE §443.153 provides that the Court may authorize the sale of an insurer's corporate entity or charter at "any time after an order of liquidation of the insurer has been granted." The statute further provides that any such sale may "separate the corporate entity or charter, together with any of its licenses to do business ..., from the remaining estate in liquidation and ... estate's assets and the claims or interests of all claimants, creditors,

policyholders, and stockholders.” *See* TEX. INS. CODE §443.153(b)(1). Moreover, the Court may authorize the canceling of all outstanding stock and other securities of and other equity interests in the failed insurer’s corporate entity or charter. *See* TEX. INS. CODE §443.153(b)(2).

3.2 The SDR moves the Court to approve the Agreement with Ag Workers providing for the sale of CPIC’s charter along with all rights CPIC has under its certificates of authority. The Agreement (attached as **Exhibit 1**) requires Receivership Court approval of its terms. The Agreement provides for the transfer of CPIC’s charter and CPIC’s rights under its certificates of authority to Ag Workers. The Agreement provides for payment by Ag Workers of a non-refundable deposit of \$15,000.00 to the SDR upon Ag Workers’ execution of the Agreement and subsequent payment of the balance (in the amount of \$85,000.00) upon approval of the sale by this Court and approval by the Texas Department of Insurance (“TDI”) of Ag Workers’ Form A filing with TDI. The Agreement’s transfer of CPIC’s rights under its certificates of authority is made without any representation or warranty regarding the transferability of such rights or the status of any such rights in any state in which CPIC had a certificate of authority. The Agreement does not transfer any other assets to Ag Workers. The Receiver has authorized and approved the SDR seeking this relief.

3.3 The transfer will be made free and clear from the claims or interest of all claimants, creditors, policyholders, and stockholders of CPIC. Pursuant to TEX. INS. CODE §443.153(b)(2), all outstanding stock and other securities of and other equity interests in the corporate entity or charter shall be cancelled. Such cancellation shall not affect, however, any claim against the CPIC estate by a holder of any such equity interest. The transfer is in the best interest of the estate, the CPIC policyholders, and creditors of the estate.

## V. NOTICE

4.1 The SDR has served this Application to all known parties at interest and all individuals and entities identified by the SDR in the Certificate of Service by email, or such other method as is described in the Certificate of Service.

## VI. OFFER OF PROOF AND VERIFICATION

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

## VII. NOTICE OF ELECTRONIC SERVICE REQUIREMENT

6.1 Pursuant to the *Order Granting Special Deputy Receiver's Application to Require Electronic Service of Pleadings and Notices* entered on April 3, 2019, all pleadings filed in response to this Application or in regard to the estate shall be served by email 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 prays that the Court enter an order as follows:

1. Granting the Application;
2. Approving the Agreement in the same or substantially similar format as **Exhibit 1**;
3. Authorizing the SDR to proceed with the performance of its duties under the Agreement;
4. Ordering that the corporate entity/charter for CPIC and all certificates of authority of CPIC shall become separated from the remaining estate in liquidation upon the closing of the Agreement;

5. Ordering that all outstanding stock and other securities of and other equity interests in CPIC's corporate entity or charter shall be cancelled upon the closing of the Agreement;
6. Ordering that the sale of the corporate entity/charter for CPIC shall be free and clear of all claims or interests of all claimants, creditors, policyholders, and/or stockholders of CPIC upon the closing of the Agreement;
7. Authorizing the SDR to take any action necessary to carry out the Order;
8. Finding that the Order constitutes a final order fully resolving all issues relating to the Application, provided that this Court shall retain jurisdiction to issue further orders pursuant to TEX. INS. CODE Chapter 443; and
9. Granting the SDR such other and further relief to which it may justly entitled.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I certify that on November 22, 2019, a true and correct copy of the foregoing *Application to Approve Sale of Charter and Certificates of Authority* was served pursuant to the Supplemental 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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Adrienne Cain

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1634 Broadway

Paducah, KY 42002

/s/ Greg Pierce  
Gregory A. Pierce

## APPLICANT'S NOTICE OF SUBMISSION

Pursuant to the terms of the Supplemental Order of Reference to Master entered by the District Court in this cause, the *Special Deputy Receiver's Application to Approve Sale of Charter and Certificates of Authority* is hereby set for written submission before the Special Master, Tom Collins, on **December 9, 2019**.

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](mailto:specialmasterclerk@tdi.texas.gov);
  - (b) The undersigned counsel, Greg Pierce at [gpierce@gpiercelaw.com](mailto: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  
Gregory A. Pierce



## AGREEMENT FOR SALE OF CHARTER

This Agreement (Agreement) is entered into by and between Ag Workers Mutual Auto Insurance Company, (“Buyer”) and CANTILO & BENNETT, L.L.P., Special Deputy Receiver of Capson Physicians Insurance Company (the “SDR”).

### I. RECITALS

1. Capson Physicians Insurance Company (“CPIC”) has been placed in receivership under Chapter 443 of the Texas Insurance Code (Code). In accordance with Section 443.154 of the Code, the SDR has all of the Receiver’s powers unless limited by the Receiver.
2. Buyer desires to purchase the Charter and Certificates of Authority of CPIC.
3. Pursuant to Section 443.153 of the Code, the SDR may apply to the District Court of Travis County, Texas (Receivership Court) for an order to sell the charter of CPIC, together with any of its licenses to do business.
4. It is the intent of Buyer and the SDR to enter into a contract whereby the SDR sells and the Buyer buys the Charter of CPIC and all certificates of authority held by CPIC. Buyer does not assume any assets or liabilities of CPIC.

NOW, THEREFORE, in consideration of the premises and the mutual representations, warranties and covenants herein contained, the parties agree as follows:

### II. APPROVALS

5. Court Approval. SDR shall file an application with the Receivership Court to approve Buyer’s acquisition of the Charter within 10 days of the effective date of this Agreement.
6. TDI Approval. On or before the 10<sup>th</sup> day after the Receivership Court approves the sale, Buyer shall file with the Texas Department of Insurance (TDI) a statement in accordance with Section 823.154 of the Code. Buyer shall cure any deficiency in its Form A application noted by TDI within ten (10) days after receipt of such notice. Buyer shall immediately inform the SDR of the approval or rejection of the Form A application. Upon approval by TDI, Buyer agrees to meet the minimum capital and surplus requirements of Chapter 822 of the Code.

### III. SALE AND CONSIDERATION

7. Purchase Price. In consideration of the sale of the Charter of CPIC, Buyer agrees to pay the SDR ONE-HUNDRED THOUSAND Dollars (\$100,000.00) (the “Purchase Price”) as follows:
  - (a) FIFTEEN THOUSAND Dollars (\$15,000.00) of the Purchase Price will be a non-refundable deposit paid to the SDR upon the execution of this Agreement.
  - (b) The remaining EIGHTY-FIVE THOUSAND Dollars (\$85,000.00) of the Purchase Price will be paid upon all of the approvals described in Section II of this Agreement.

8. Certificates of Authority. The records of CPIC reflect that it was licensed in the states identified in **Exhibit A**. Buyer is aware and understands that the licenses of some states may be suspended, revoked or expired. The SDR transfers to Buyer any rights that CPIC may have under its Certificates of Authority on the Closing Date, to the extent that such rights are transferable by law. The SDR makes no representations or warranties regarding the transferability of such Certificates of Authority or the status of any license in any state.
9. Assets and Liabilities. Buyer acquires no rights to any assets of CPIC, and does not assume any liabilities of CPIC.

#### **IV. CLOSING**

10. Closing and Closing Date. Unless this Agreement is terminated pursuant to Paragraph 15, or unless the Parties otherwise mutually agree, the closing of this Agreement shall take place within 10 days after all of the approvals described in Section II have been completed.
11. Actions on Closing. Buyer agrees to deliver to SDR at Closing a cashier's check, or other form of payment as may be mutually agreed, for the remaining amount of the Purchase Price described in Paragraph 7(b).

#### **V. REPRESENTATIONS AND WARRANTIES**

12. Representations and Warranties of SDR. The SDR represents and warrants that, as of the execution of this Agreement:
  - (a) The Charter is a valid certificate of authority of a Texas insurance company issued under the laws of the State of Texas.
  - (b) The SDR, subject to the approval of the Receivership Court, has the authority to enter into this Agreement. The SDR has not conveyed, assigned, or otherwise transferred to any other party any rights, title or interest in the Charter.

The SDR makes no representations or warranties regarding the status of CPIC Certificates of Authority, or any rights that Buyer may have under CPIC's Charter or its Certificates of Authority.

13. Representations, Obligations and Warranties of Buyer. Buyer represents and warrants the following as of the execution of this Agreement:
  - (a) Buyer is a corporation in good standing under the laws of the State of Texas and has all requisite corporate power to enter into and perform this Agreement.
  - (b) Buyer is in sound financial condition and does not intend to, nor have reason to believe that it will, be subject to any state or federal bankruptcy or insolvency proceeding.
14. Remedies. Buyer's sole recourse and remedy for any breach by the SDR shall be limited to the return of the portion of the purchase price described in Paragraph 7(b).

18. Post-Closing Actions. The Parties shall cooperate after Closing by complying with reasonable requests for information related to this Agreement.
19. Section and Paragraph Headings. The section and paragraph headings in this Agreement are for reference purposes only and shall not be used to construe the meaning of this Agreement.
20. Entire Agreement. This Agreement, and any exhibits attached hereto, constitute the entire Agreement of the Parties, and supersedes any prior agreements, arrangements, and understandings related to the subject matter hereof. No representation, promise, inducement or statement has been made by any Party which is not contained in this Agreement.
21. Amendment. This Agreement may be amended, modified, superseded, or canceled, only by the mutual written consent of the parties, and any of the terms, provisions, covenants, representations, warranties, or conditions hereof may be waived, only by a written instrument executed by the party waiving compliance. The failure of any party, at any time or times, to require performance of any provisions hereof, shall, in no manner, effect the right to enforce the same. No waiver by any party, of any condition or of the breach of any term, provision, covenant, representation, or warranty contained in this Agreement whether by conduct or otherwise, in any one or more instances, shall be deemed to be construed as a further or continuing waiver of any such condition or breach or a waiver of any other condition or of the breach of any other term, provision, covenant, representation, or warranty.
22. Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Texas, and venue for any dispute between the parties hereto shall be the District Court of Travis County, Texas.
23. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original.
24. Advice of Counsel. Both parties acknowledge that they have each had the opportunity to have this Agreement reviewed by counsel of their own choosing.
25. Successor and Assigns. All the terms, provisions, covenants, representations, warranties, and conditions of this Agreement shall be binding upon and inure to the benefit of, and be enforceable by, the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, this Agreement has been executed by the Special Deputy Receiver and the Buyer on the date shown below.

**Special Deputy Receiver for Capson Physicians Insurance Company**

By: 

Date: 11/12/19

## VII. TERMINATION

15. Events of Termination.

- (a) This Agreement may be terminated by a mutual written agreement of the Parties.
- (b) If this sale is not approved by the Receivership Court or TDI, this Agreement shall be terminated. The SDR will retain the non-refundable deposit described in Paragraph 7(a).

## VIII. GENERAL PROVISIONS

16. Expenses. Each of the parties will pay all of its own costs and expenses of its performance of, and in compliance with this Agreement.
17. Notices. All notices, requests, demands, and other communications under this Agreement shall be in writing and shall be delivered by overnight delivery service, or if mailed first-class, certified mail, postage prepaid, at the following addresses, or at such other address as shall be given in writing by any party to the other:

To Buyer:

Marcus Hill, President  
Ag Workers Mutual Auto Insurance Company  
5500 Lower Birdville Road  
Fort Worth, Texas 76117-8613

with copy to:

Michael L. Averill, CPCU, MBA  
President, MLA Consulting, LLC  
92 McIntosh Lane  
Bedford, New Hampshire 03110

To Special Deputy Receiver:

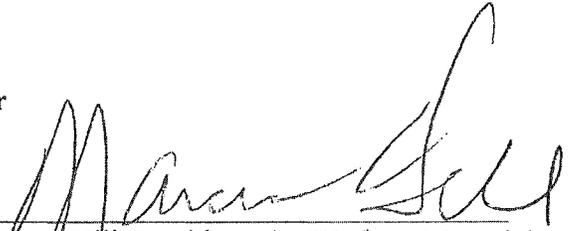
Joseph N. West  
CANTILO & BENNETT, L.L.P.  
11401 Century Oaks Terrace, Suite 300  
Austin, Texas 78758  
jnwest@cb-firm.com

With copy to:

Greg Pierce  
P.O. Box 40  
Austin, Texas 78767  
gpierce@gpiercelaw.com

**Buyer**

By:

  
Marcus Hill, President, Ag Workers Mutual Auto Insurance Company

Date:

11-11-19

**EXHIBIT A**

Alabama  
Alaska  
Arkansas  
Arizona  
District of Columbia  
Idaho  
Illinois  
Indiana  
Iowa  
Kentucky  
Louisiana  
Maryland  
Mississippi  
Missouri  
Montana  
Nebraska  
Nevada  
New Mexico  
North Dakota  
Oklahoma  
Oregon  
Pennsylvania  
South Dakota  
Tennessee  
Texas  
Washington  
West Virginia  
Wisconsin