

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 TH JUDICIAL DISTRICT

**SPECIAL DEPUTY RECEIVER’S
APPLICATION TO APPROVE FIRST EARLY ACCESS DISTRIBUTION**

TO THE HONORABLE JUDGE OF SAID COURT:

CANTILO & BENNETT, L.L.P., solely in its capacity as Special Deputy Receiver of Capson Physicians Insurance Company (the “SDR” and “CPIC” respectively), files this Application to Approve First Early Access Distribution (“Application”).

I. INTRODUCTION

1.1 The SDR files this Application for authority to make a first early access distribution to the insurance guaranty associations affected by the CPIC receivership (collectively, the “Affected Associations”). The SDR requests authority to distribute \$6,689,544.21 representing the amounts paid by the Affected Associations for Class 1 expenses as of August 31, 2020.

II. AUTHORITY

2.1 The SDR is authorized to file this Application pursuant to TEX. INS. CODE § 443.303, which provides for early access distribution to insurance guaranty associations with the approval of this Court.

2.2 The subject matter of this Application is 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. BACKGROUND

3.1 On February 11, 2019, the Court entered the *Agreed Order Appointing Rehabilitator, Permanent Injunction and Notice of Automatic Stay* (the “Rehabilitation Order”). The Rehabilitation Order appointed the Texas Commissioner of Insurance as Rehabilitator of CPIC. On that same date, the Texas Commissioner of Insurance appointed CANTILO & BENNETT, L.L.P. as Special Deputy Receiver of CPIC. Subsequently, on June 28, 2019, the Court entered the *Order Appointing Liquidator and Permanent Injunction* (the “Liquidation Order”) placing CPIC into liquidation.

3.2 On January 10, 2020, the SDR filed the *Special Deputy Receiver’s Report Pursuant to TEX. INS. CODE § 443.303(c)*, reporting that the SDR had not had sufficient time to calculate “distributable assets” at that time.

3.3 The SDR has determined that the estate has distributable assets and now seeks Receivership Court authority to make a first early access distribution to the Affected Associations.

IV. STATUTORY REQUIREMENTS

4.1 Pursuant to TEX. INS. CODE § 443.303, the SDR shall apply to the Court for approval to make early access payments to a guaranty association having obligations in connection with the liquidation on at least an annual basis, if distributable assets are available. However, distributions are not limited to a set timetable and the SDR may, at its sole and absolute discretion, seek a distribution at any time that it determines that an estate has distributable assets. Early access payments are not limited to the claims and expenses paid to date by a guaranty association; however, the SDR may not make a distribution to a guaranty association in excess of all anticipated claims of the guaranty association. Amounts advanced to a guaranty association under TEX. INS.

CODE §443.303 are treated as advances against distributions to be made under TEX. INS. CODE § 443.302.

4.2 TEX. INS. CODE § 443.303(c) provides:

Within 120 days after the entry of an order of liquidation by the receivership court, and at least annually after the entry of the order, the liquidator shall apply to the receivership court for approval to make early access payments out of the general assets of the insurer to any guaranty associations having obligations arising in connection with the liquidation or shall report that there are no distributable assets at that time based on financial reporting as required in Section 443.016. . . .

TEX. INS. CODE § 443.303(f) directs that an application for early access payments shall, based on the best information available to the SDR at the time, provide the following:

- (1) the amount reserved for the entire expenses of the liquidation through and after its closure and for distributions on claims, to the extent necessary and appropriate;
- (2) the computation of distributable assets and the amount and method of equitable allocation of early access payments to each of the guaranty associations; and
- (3) the most recent financial information filed with the National Association of Insurance Commissioners.

V. DISTRIBUTABLE ASSETS

5.1 TEX. INS. CODE § 443.303(a) defines “distributable assets” as all general assets of the receivership estate, less the necessary and appropriate amounts reserved for expenses of liquidation through and after closure and distributions on claims other than those of the guaranty associations that fall within the priority classes of claims established in Section 443.301(b). As of February 28, 2021, the date of the SDR’s most recent financial report filed with the Receivership Court, the cash assets of the receivership estate were \$12,392,345. Copies of the February 28, 2021, Statement of Assets and Statement of Liabilities are attached as **Exhibits 1** and **2**, respectively. The amount reserved for the estimated remaining entire expenses of the liquidation through and after its closing is approximately \$2,653,714. After adjustment for expenses of

liquidation, and establishing a prudent reserve, the SDR's preliminary estimate for liquid "distributable assets" for the first early access distribution is approximately \$6,689,544.21.

5.2 The SDR's preliminary estimate for "distributable assets" is based upon current projections of the receivership's future activities. The receivership reserves may change substantially due to unforeseen factors beyond the SDR's control.

VI. GUARANTY ASSOCIATION CLAIMS

6.1 Pursuant to TEX. INS. CODE § 443.252(d), all Affected Associations report their expense and loss payments and reserves on a monthly basis through the Uniform Data Standards ("UDS") protocol of the National Conference of Insurance Guaranty Funds. UDS is an electronic communication protocol that uses a series of defined computer file formats to permit guaranty associations to electronically report insolvency-related claims to receivers. In summary, as of February 28, 2021, the Affected Associations report as follows:

- a) Incurred (Paid) Class 1 claims of \$6,962,390.14;
- b) Class 1 expense reserves of \$6,007,273.12.

6.2 All reporting on behalf of the Affected Associations is subject to supplementation as additional expenses and claims payments are incurred. The paid claims and reserve numbers reported by the associations have not been verified or audited. They are used exclusively for making the calculations necessary for this Application. Neither this Application, nor any other early access application, constitutes an adjudication of the POCs filed or to be filed by any Affected Association.

6.3 At this time, the SDR seeks to make early access distributions based on the "Incurred" (or paid) expenses for Class 1. It does not appear that estate assets will ultimately exceed the current and projected Class 1 claims so the SDR is only able to make a distribution on

Class 1 claims. The Schedule attached as **Exhibit 3** sets out the paid Class 1 claims reported in the UDS reporting for each Affected Association as of February 28, 2021.

6.4 The property of the receivership estate includes deposits made by CPIC as a condition for doing business in New Mexico, Oregon, and Texas. The Texas deposit was released to the SDR. An ancillary receiver for CPIC was appointed in New Mexico and it recovered \$330,000 of the surety bond that was the statutory deposit in that state (the “New Mexico Deposit”). CPIC’s \$424,250 deposit with Oregon (the “Oregon Deposit”) has been retained by the Oregon regulators, and the SDR has been advised that an ancillary receivership will be commenced in Oregon. TEX. INS. CODE § 443.303(i) provides: “Without the consent of the affected guaranty associations *or an order of the receivership court*, the liquidator may not offset the amount to be dispersed to any guaranty association by the amount of any specific deposit or any other statutory deposit or asset of the insolvent insurer held in that state unless the association has actually received the deposit.” (emphasis added). The New Mexico and Oregon Deposits could be disbursed to the New Mexico and Oregon guaranty associations, respectively, but the associations have not consented to an offset of the deposits. In order to avoid any inequitable payments to the Affected Guaranty Associations that could result from the disbursement of the deposits, the SDR proposes to reduce the amounts distributed in the first early access distribution to the New Mexico association and to the Oregon association by the amount of the New Mexico Deposit and the Oregon Deposit, respectively. The New Mexico association and the Oregon association will share in any future distributions to the extent that their recovery from the statutory deposit does not cover claims and expenses paid by the New Mexico association and/or the Oregon association. The SDR moves the Court to order that the SDR may offset the amounts of the New Mexico Deposit and Oregon Deposit from the distribution to the New Mexico association and to the Oregon

association, respectively. To the extent that any deposits are not transferred to the New Mexico association and/or to the Oregon association, the SDR will make additional early access payments, out of future distributions, to the extent necessary to equalize the distributions between all associations.

VII. PROPOSED DISTRIBUTION

7.1 The SDR proposes to distribute \$6,689,544.21 from the receivership estate as the first early access distribution to the Affected Associations in the amounts set out on **Exhibit 3**. The SDR agrees to make the distribution within thirty (30) business days after the date the Order is entered by the Receivership Court, unless a motion for new trial or an appeal is filed, or an order staying the distribution is entered and not yet expired.

VIII. NOTICE

8.1 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 including the Affected Associations, by e-mail and, as noted, by mail or overnight delivery to certain state and federal agencies.

8.2 The Application is set for submission before the Special Master on June 1, 2021.

IX. OFFER OF PROOF AND VERIFICATION

9.1 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., in its capacity as Special Deputy Receiver of Capson Physicians Insurance Company.

X. NOTICE OF ELECTRONIC SERVICE REQUIREMENT

10.1 All pleadings filed in response to this Application 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., in its capacity as Special Deputy Receiver of Capson Physicians Insurance Company, respectfully prays that this Court enter an order:

1. Granting the Application in all respects;
2. Authorizing the Special Deputy Receiver to distribute \$6,689,544.21 from the assets of the receivership estate to the Affected Associations as the first early access distribution pursuant to TEX. INS. CODE § 443.303 as set out in **Exhibit 3**;
3. Ordering that the statutory deposits in New Mexico and in Oregon shall be applied as a credit against the early access distribution for those states' association under TEX. INS. CODE § 443.303;
4. Authorizing the SDR to make the early access distribution within thirty (30) business days after the date the Order is entered by the Receivership Court, unless a motion for new trial or an appeal is filed, or an order staying the distribution is entered and not yet expired;
5. Ordering the Affected Associations to return to the Special Deputy Receiver any amount of the early access distribution that may be required to pay secured creditors and other claims as provided in TEX. INS. CODE § 443.303(g);
6. Authorizing the Special Deputy Receiver to take any actions necessary to implement the Order;
7. Finding that the Order constitutes a final order fully resolving all issues relating to this Application, provided that this Court shall retain jurisdiction to issue further orders pursuant to TEX. INS. CODE Chapter 443; and

8. Granting the SDR such other and further relief to which it may be justly entitled.

Respectfully submitted,

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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 First Early Access Distribution* is hereby set for written submission before the Special Master, Tom Collins, on **June 1, 2021**.

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
Gregory A. Pierce

CERTIFICATE OF SERVICE

I certify that on April 27, 2021, a true and correct copy of the foregoing *Special Deputy Receiver's Application to Approve First Early Access Distribution* 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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/s/ Greg Pierce

Gregory A. Pierce

**Capson Physicians Insurance Company
Statement of Net Assets**

**For the Period Ending
02/28/21**

Line		02/28/21
Cash		
1	Cash	
	Cash - Unrestricted	12,392,345
	APF Funds (Loan proceeds)	
Investments		
2	Short-Term Investments	
3	Bonds	
4	Stocks - Preferred & Common	
5	Investments in Subsidiaries, Controlled or Affiliated Entities	
6	Mortgage Loans	
7	Real Estate	
8	Policy Loans	
9	Other Invested Assets	
Restricted Assets		
10	Statutory Deposits	424,250
11	Funds held by or deposited with Reinsured Companies	
12	Restricted - Other	
	Funds Held for Others - Granite State Insurance Co (Draw Down on LOC)	
	Funds Held for Others - Texas Treasury Acct-Granite State Insurance Co	
	Funds Held for Others - PCF Surcharge Refunds	23,354
Reinsurance Receivable		
13	Reinsurance Recoverables on Paid Losses & LAE (net of allowance)	0
14	Reinsurance Recoverables on Unpaid Losses & LAE (net of allowance)	0
15	Reinsurance Recoverables on UEP & Contingent Commissions	
Other Receivables		
16	Salvage & Subrogation Recoveries	
17	Premiums Due from Agents & Policyholders	0
18	Receivable from Parents, Subsidiaries & Affiliates-Agents Balances	
19	Receivable from Guaranty Associations - Early Access Payments	330,000
20	Other Receivables	
	Due from Ag Workers-Charter Sale	
	Eshares Inc-Unauthorized Debit to be reimbursed	
Other Assets		
21	FF&E	
22	Other Assets	4,534
	Total Assets	13,174,483

Capson Physicians Insurance Company
Statement of Net Liabilities

For Period Ending
02/28/21

Line		02/28/21
1	Secured Claims	
2	APF Loan	
3	Special Deposit Claims	
Administrative Claims - Class 1		
4	Administrative Claims - State/Receiver	
	Special Deputy Receiver, Subcontractors Fees & Expenses	92,215
	Liquidation Oversight	4,183
	Special Master's Fees	
5	Administrative Claims - Guaranty Assns	
	Administrative Expense Paid	2,775,870
	Administrative Expense Reserves	
6	LAE - Guaranty Assns	
	LAE Paid	4,186,520
	LAE Reserves	6,007,273
Policy Claims - Class 2		
7	Loss Claims - Guaranty Assns	
	Loss Claims Paid	4,010,230
	Loss Claims Reserves	11,765,229
8	Loss Claims - Other	
	Other Loss Claims Paid	
	Other Loss Claims Reserves	34,460,201
9	LAE - Other	
10	Unearned & Advance Premium Claims - GA	981,507
11	Unearned & Advance Premium Claims - Other	307,142
Other Liabilities		
12	Class 3 Claims	
13	Class 4 Claims	
14	Class 5 General Unsecured Creditor Claims	2,517,114
15	Class 5 Reinsurance Related Unsecured Claims	2,852,078
16	Class 6 Claims	16,886
17	Class 7 Claims	
18	Class 8 Claims	
19	Class 9 Claims	
20	Class 10 Interest	
21	Class 11 Claims	
22	Other Liabilities	3,419,118
	Total Liabilities	73,395,566
23	Total Equity/(Deficit) Excess (Deficiency) of Assets over Liabilities	(60,221,083)
	Total Liabilities & Equity	13,174,483

CAPSON PHYSICIANS INSURANCE COMPANY-IN RECEIVERSHIP
 EARLY ACCESS DISTRIBUTION ANALYSIS
 REPORTING AS OF FEBRUARY 28, 2021

CLASS 1 CLAIMS

State	IGA LAE Reporting To	(A)	(B)	(C)		(D)	(E)	(F)	Class 1 Loss Expense Reserves
		Admin Expense Paid	Loss Expense Paid	Total	Statutory Deposits Held by State	Prior Payments via draw down of statutory deposit bonds	Recommended Early Access Payments-Sum of Columns (C)-(D)-(E)		
AK	2/28/2021	1,727.15	143,565.57	\$145,292.72			\$145,292.72	418,058.46	
AL	1/31/2021	20,456.29	66,453.16	86,909.45			\$86,909.45	25,393.30	
AR	12/31/2020	59,419.85	329,052.09	388,471.94			\$388,471.94	49,733.68	
AZ	2/28/2021	8,065.10	297,355.87	305,420.97			\$305,420.97	167,204.23	
DC	3/11/2020	0.00	0.00	0.00			\$0.00	0.00	
IA	11/5/2019	0.00	0.00	0.00			\$0.00	0.00	
IL	1/31/2021	364,137.80	96,435.71	460,573.51			\$460,573.51	278,622.71	
IN	1/31/2021	130,879.95	91,592.12	222,472.07			\$222,472.07	83,817.23	
KY	2/28/2021	25,370.15	237,101.76	262,471.91			\$262,471.91	136,588.68	
LA	1/31/2021	138,011.16	217,423.84	355,435.00			\$355,435.00	716,994.26	
MD	2/16/2021	0.00	0.00	0.00			\$0.00	0.00	
MO	1/31/2021	138,011.16	200,786.66	338,797.82			\$338,797.82	180,845.78	
MS	1/31/2021	10,209.12	9,120.30	19,329.42			\$19,329.42	740.35	
NM	2/29/2020	92,320.16	117,241.52	209,561.68		\$330,000.00	\$0.00	452,039.99	
NV	2/28/2021	36,391.88	132,560.66	168,952.54			\$168,952.54	46,504.58	
OK	1/31/2021	791,590.54	308,534.20	1,100,124.74	\$424,250.00		\$1,100,124.74	149,846.80	
OR	12/31/2020	18,559.83	44,724.42	63,284.25			\$0.00	36,939.40	
TN	1/31/2021	164,915.39	141,564.64	306,480.03			\$306,480.03	196,961.69	
TX	1/31/2021	335,057.64	1,289,409.01	1,624,466.65			\$1,624,466.65	1,435,852.00	
WA	1/31/2021	48,167.87	15,870.02	64,037.89			\$64,037.89	189,129.98	
WV	12/31/2020	392,579.44	447,728.11	840,307.55			\$840,307.55	1,442,000.00	
Totals		\$2,775,870.48	\$4,186,519.66	\$6,962,390.14	\$424,250.00	\$330,000.00	\$6,689,544.21	\$6,007,273.12	

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Greg Pierce on behalf of Greg Pierce
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