

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 SETTLEMENT AGREEMENT**  
**[POC Nos. 292 and 362]**

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 Settlement Agreement [POC Nos. 292 and 362]* (the “Application”), and shows the following:

**I. INTRODUCTION**

1.1 The SDR seeks approval of a confidential settlement in connection with a lawsuit filed in Kentucky against CPIC insureds (the “Lawsuit”). The settlement agreement resolves the Lawsuit as well as the two POCs filed against the CPIC estate encompassing the claims asserted in the Lawsuit, POC Nos. 292 and 362. The SDR seeks this Court’s approval of the settlement under TEX. INS. CODE §§ 443.255 and 443.258. The settlement is in the best interests of the receivership estate and its policyholders and creditors. Settlement will end the Lawsuit, reducing costs and expenses of defense incurred by the Kentucky Insurance Guaranty Association (“KIGA”) and the CPIC estate.

**II. DOCUMENT FILED UNDER SEAL**

2.1 As a condition of settlement, the SDR agreed to keep the terms of the settlement agreement (the “Agreement”) confidential. Accordingly, the SDR files the Agreement (**Exhibit 1**)

under seal. The Insurer Receivership Act expressly provides that the SDR may submit certain records under seal. *See* TEX. INS. CODE §443.007(c):

The receiver shall file an application explaining the proposed action and the basis of the proposed action. The receiver may include any evidence in support of the application. If the receiver determines that any documents supporting the application are confidential, the receiver may submit them to the receivership court under seal for in camera inspection.

2.2 The SDR has determined that the Agreement should be kept confidential. The settling plaintiffs and defendants insisted that the terms of the settlement remain confidential. The SDR submits that publishing the document would cause the parties to not agree to its terms, might deter the future willingness of parties to settle claims involving the SDR. Finally, the settlement involves the resolution of the claims of a minor.

### **III. BACKGROUND AND JURISDICTION**

3.1 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”).

3.2 The SDR is authorized to file this Application pursuant to TEX. INS. CODE §§ 443.255 and 443.258.

3.3 This Court has original jurisdiction for all matters arising under TEX. INS. CODE Chapter 443 or arising or related to this proceeding as the court in which these proceedings are pending pursuant to § 443.005(c).

3.4 The SDR is authorized to file this Application pursuant to TEX. INS. CODE §§ 443.255 and 443.258.

3.5 Venue in Travis County, Texas in mandatory pursuant to TEX. INS. CODE § 443.005(g).

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

#### **IV. THE LAWSUIT**

4.1 CPIC insured a doctor and the practice in which the doctor worked (the “Insureds”) under a medical malpractice policy. The Insureds provided medical services in connection with a pregnancy and birth. The parents of the child filed suit as next friends, natural guardians, and parents of their child against the Insureds (and others) for medical malpractice in connection with the birth. CPIC accepted coverage of the claim prior to receivership and provided for defense of the Insureds. Subsequently, after CPIC was placed into receivership, the parents filed POC No. 292 asserting a claim for \$2 million against CPIC in connection with their claim against the Insureds. Additionally, the Insureds filed POC No. 362 seeking coverage for the claims asserted by the parents.

4.2 After receivership, the KIGA assumed responsibility for providing a defense to the Insureds in the Lawsuit. In 2022, KIGA, the parents, the Insureds, and the SDR agreed to settle the claims against the Insureds.

#### **V. TERMS OF THE AGREEMENT**

5.1 The specific terms and details of the Agreement are confidential. Accordingly, the Agreement is filed under seal. The following summarizes the major terms of the Agreement but does not vary them to the extent of any inconsistency between this description and the Agreement. In summary, the Agreement provides for payment by KIGA to the parents and for the SDR to

allow a Class 2 claim in the amount of \$700,000.00 in favor of the parents. The payment by KIGA and the allowed Class 2 claim will not exceed the limitation of coverage of the policy issued by CPIC to the Insured.

5.2 The SDR asserts that the proposed Agreement is in the best interest of the estate and its policyholders and creditors because, among other reasons, it resolves a large claim against the estate and reduces additional costs to the estate associated with KIGA's continued defense of the claim. The SDR asserts that keeping the settlement confidential is appropriate in light of the involvement of a minor child in the settlement, as well as in light of the Insureds' right under the CPIC policy to approve any settlement.

#### **VI. NOTICE**

6.1 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.

#### **VII. OFFER OF PROOF AND VERIFICATION**

7.1 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.

#### **VIII. NOTICE OF ELECTRONIC SERVICE REQUIREMENT**

8.1 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:

1. Grant the Application;
2. Approve the terms of the Agreement;
3. Authorize the SDR to carry out the terms of the Agreement;
4. Order that the Agreement be filed under seal;
5. Grant the SDR such other and further relief to which it may justly entitled.

Respectfully submitted,

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Capson Physicians Insurance Company**

## 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 Settlement Agreement [POC Nos. 292 and 362]* is hereby set for written submission before the Special Master, Tom Collins, on **June 20, 2022**.

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

**CERTIFICATE OF SERVICE**

I certify that on June 6, 2022, a true and correct copy of the foregoing *Application to Approve Settlement Agreement [POC Nos. 292 and 362]* 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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THE STATE OF TEXAS  
*Plaintiff,*

v.

CAPSON PHYSICIANS INSURANCE  
COMPANY,  
*Defendant.*

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

250<sup>TH</sup> JUDICIAL DISTRICT

**ORDER APPROVING SPECIAL DEPUTY RECEIVER'S APPLICATION  
TO APPROVE SETTLEMENT AGREEMENT  
[POC NOS. 292 AND 362]**

The Court considered the *Special Deputy Receiver's Application to Approve Settlement Agreement [POC Nos. 292 and 362]* filed by CANTILO & BENNETT, L.L.P., Special Deputy Receiver of Capson Physicians Insurance Company (the "SDR" and "CPIC," respectively). Having considered the Application, the Court finds as follows:

1. The *Order of Reference to Master and Supplemental Order of Reference to Master* (collectively, the "Order of Reference") entered by this Court provides that applications filed pursuant to TEX. INS. CODE §§ 443.255 AND 443.258 are referred to the Special Master appointed in this proceeding;
2. The Application was submitted to the Special Master in accordance with the Order of Reference;
3. Notice of the Application was provided in accordance with TEX. INS. CODE §443.007(d) and the Order of Reference, and no objections to the Application were filed;
4. The Texas Property and Casualty Insurance Guaranty Association ("TPCIGA") filed its Acknowledgment and Waiver to the Application.
5. The Special Master has issued a recommendation that the Application should be granted pursuant to Rule 171 of the Texas Rules of Civil Procedure;

6. The Court has jurisdiction over the Application and the parties affected hereunder;  
and

7. The Application should be GRANTED in all respects.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED as follows:

1. The Application is GRANTED.
2. The Settlement Agreement is approved; and
3. The SDR is authorized to take such actions necessary to effectuate the purposes of the Application;
4. The Agreement (Exhibit 1 to the Application) shall be filed and maintained under seal pursuant to Tex. Ins. Code §443.007(c); and
5. This Order constitutes a final judgment 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. This Order does not modify any of the terms or provisions of this Court's *Order Appointing Liquidator and Permanent Injunction* or the automatic stay imposed by TEX. INS. CODE § 443.008.

Signed \_\_\_\_\_, 2022.

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Judge Presiding