

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

PEOPLE OF THE STATE OF ILLINOIS, *ex rel.*)
NATHANIEL S. SHAPO, DIRECTOR OF)
INSURANCE OF THE STATE OF ILLINOIS,)

Plaintiffs,)

v.)

ASSOCIATED PHYSICIANS)
INSURANCE COMPANY,)
an Illinois Domestic Stock, Property and Casualty)
Insurance Company,)

Defendant.)

NO. **01CH13294**

**AGREED ORDER OF LIQUIDATION
WITH A FINDING OF INSOLVENCY**

THIS CAUSE COMING ON TO BE HEARD upon the Verified Complaint for Liquidation, filed herein by THE PEOPLE OF THE STATE OF ILLINOIS, upon the relation of NATHANIEL S. SHAPO, Director of Insurance of the State of Illinois, by and through their attorney, JAMES E. RYAN, Attorney General of the State of Illinois, seeking the entry of an agreed order of liquidation with a finding of insolvency against Associated Physicians Insurance Company and other relief, all pursuant to the provisions of Article XIII of the Illinois Insurance Code (the "Code"), 215 ILCS 5/187, *et seq.*, and further to protect the interests of Associated Physicians Insurance Company's policyholders and creditors, and of the public; the Court having jurisdiction over the parties hereto and the subject matter hereof; the Court having reviewed the pleadings filed herein and having considered arguments of counsel thereon, and the Court then being otherwise advised in the premises, and for good cause appearing therefore;

THE COURT FINDS THAT:

1. The Relator, Nathaniel S. Shapo, is the Director of the Department of Insurance of the State of Illinois (the "Director") and, as such, is charged under 215 ILCS 5/401 and 20 ILCS 1405/1405-5 with the rights, powers and duties appertaining to the enforcement and execution of the insurance laws of the State of Illinois.

2. The Defendant, Associated Physicians Insurance Company ("APIC"), is a domestic stock, property and casualty company organized under and existing by virtue of the laws of the State of Illinois, having its principal place of business in and within the Village of Oak Brook, County of Cook, State of Illinois, and is authorized to transact the kinds of insurance in the State of Illinois as set forth by the provisions of the Code applicable to stock, property and casualty insurance companies, 215 ILCS 5/9, and, as such, APIC is a domestic company as defined by 215 ILCS 5/2(f).

3. By his Verified Complaint, the Director seeks the entry of an Agreed Order of Liquidation With a Finding of Insolvency against APIC pursuant to Section 188 of the Code, 215 ILCS 5/188. By his Verified Complaint, the Director alleges that sufficient cause exists under Section 188 of the Code, *id.*, for the entry of an Agreed Order of Liquidation With a Finding of Insolvency against APIC, including, without limitation, the following facts and circumstances:

- (a) APIC's board of directors has consented to liquidation, as follows:
 - (i) At a special meeting of the board of directors held on March 1, 2001, APIC's board of directors adopted a resolution in which the board of directors resolved to, *inter alia*:
 - (a) Acknowledge that APIC does not meet the capital and surplus requirements of the Code, which, as a result, would justify a court order for liquidation under Section 188 of the Code, 215 ILCS 5/188;

- (b) not oppose the entry of an Agreed Order of Liquidation by the Circuit Court of Cook County, Illinois, against APIC and affirming the Director as statutory Liquidator of APIC in accordance with Article XIII of the Code;
 - (c) agree and consent to the commencement of liquidation proceedings commencing on or after April 30, 2001, upon the filing of a Verified Complaint by the Director; and
 - (d) consent to the entry of an Agreed Order of Liquidation, to be commenced by the Director of Insurance, in his sole discretion against APIC by the Circuit Court of Cook County, Illinois, and to the liquidation of APIC, by the Director, acting solely in his capacity as statutory and court-affirmed Liquidator of APIC, under the insurance laws of the State of Illinois; and
 - (e) waive any right to contest a Verified Complaint for Liquidation; and
 - (f) waive any right to appeal the Agreed Order of Liquidation.
- (b) APIC is statutorily insolvent in the amount of \$167,398, as follows:
- (i) As of June 30, 2001, APIC had liabilities totaling \$1,888,311.
 - (ii) As of June 30, 2001, APIC possessed total assets of \$1,720,913.
- (c) APIC is insolvent from a cash flow standpoint in that it currently has insufficient accessible assets to pay its debts as they fall due, as follows:
- (i) As of June 30, 2001, APIC had substantial reinsurance premiums presently due totaling \$1,275,431.34.
 - (ii) As of June 30, 2001, APIC possessed available liquid assets of \$44,146.
- (d) APIC's condition is such that its further transaction of business would be hazardous to its policyholders, its creditors and to the public, as follows:
- (i) The continued transaction of the business of APIC will result in the further depletion of APIC's assets to the detriment of APIC, and ultimately to the detriment of APIC's policyholders and creditors, and the public.

4. Sufficient cause exists for the entry of an Agreed Order of Liquidation With a Finding of Insolvency against the Defendant APIC.

5. The entry of the Agreed Order of Liquidation With a Finding of Insolvency creates an estate comprising all of the liabilities and assets of Defendant APIC.

THE COURT ORDERS THAT:

A. Nathaniel S. Shapo, Director of Insurance of the State of Illinois, and his successors in office, is affirmed as the statutory Liquidator (the "Liquidator") of APIC, with all of the powers appurtenant thereto under Articles XIII and XIII ½ of the Code. The Liquidator's statutory authority includes, without limitation, the following:

- (i) Pursuant to Section 191 of the Code, 215 ILCS 5/191, the Liquidator is vested by operation of law with the title to all property, contracts, and rights of action of APIC; and
- (ii) Pursuant to Section 191 of the Code, 215 ILCS 5/191, the Liquidator is authorized to remove any and all records and property of APIC to his possession and control or to such other place as may be convenient for purposes of the efficient and orderly administration of APIC's liquidation; and
- (iii) Pursuant to Section 193(1) of the Code, 215 ILCS 5/193(1), the Liquidator is authorized to deal with the property, business and affairs of APIC in his name, as Director, and that the Liquidator is authorized to deal with the property, business and affairs of APIC in the name of APIC; and
- (iv) Pursuant to Section 193(2) of the Code, 215 ILCS 5/193(2), the Liquidator, without the prior approval of the Court, is authorized to sell or otherwise dispose of any real or personal property of APIC, or any part thereof, and to sell or compromise all debts or claims owing to APIC having a value in the amount of Twenty-Five Thousand Dollars (\$25,000.00), or less. Any such sale by the Liquidator of the real or personal property of APIC having a value in excess of Twenty-Five Thousand Dollars (\$25,000.00), and sale or compromise of debts owing to APIC exceeds Twenty-Five

Thousand Dollars (\$25,000.00) shall be made subject to the approval of the Court; and

- (v) Pursuant to Section 193(3) of the Code, 215 ILCS 5/193(3), the Liquidator is authorized to bring any action, claim, suit or proceeding against any other person or entity with respect to that person's dealings with the company including, but not limited to, prosecuting any action, claim, suit, or proceeding on behalf of the creditors or policyholders of APIC; and
- (vi) Pursuant to Section 194(b) of the Code, 215 ILCS 5/194(b), the Liquidator may, within two (2) years after the entry of the liquidation order prayed for herein, or within such further time as applicable law permits, institute an action, claim, suit, or proceeding upon any cause of action against which the period of limitation fixed by applicable law had not expired as of the filing of the complaint upon which said order was entered; and
- (vii) Subject to the provisions of Section 202 of the Code, 215 ILCS 5/202, the Liquidator is authorized to appoint and retain those persons specified in Section 202(a) of the Code, 215 ILCS 5/202(a), and to pay, without the further order of this Court, from the assets of APIC all administrative expenses incurred during the course of the liquidation of APIC; and
- (viii) Pursuant to Section 203 of the Code, 215 ILCS 5/203, the Liquidator shall not be required to pay any fee to any public officer for filing, recording or in any manner authenticating any paper or instrument relating to any proceeding under Article XIII of the Illinois Insurance Code, 215 ILCS 5/187 *et seq.*, nor for services rendered by any public officer for serving any process; and
- (ix) Pursuant to the provisions of Section 204 of the Code, 215 ILCS 5/204, the Liquidator may seek to avoid preferential transfers of APIC's property and to recover such property or its value, if it has been converted; and

B. Pursuant to Section 194 of the Code, 215 ILCS 5/194, the rights and liabilities of APIC, and of its policyholders, creditors, stockholders and all other persons interested in APIC's assets are fixed as of the date of the entry of the Order prayed for herein, except as provided in paragraph J below. The rights of persons entitled to file claims shall be determined as provided in Section 209 of the Code, 215 ILCS 5/209; and

C. Pursuant to Section 209(5) of the Code, 215 ILCS 5/209(5), APIC's obligation, if any, to defend or continue the defense of any claim or suit under a liability insurance policy is terminated upon the entry of the Order prayed for herein; and

D. This Agreed Order of Liquidation be and the same is hereby entered as, to and against Associated Physicians Insurance Company with a finding of insolvency; and

E. There being no just reason for delaying enforcement or appeal of this Order, this Agreed Order of Liquidation With a Finding of Insolvency is a final order within the meaning of Illinois Supreme Court Rule 307(a)(5); and

F. Subject to the further orders of the Court, the Liquidator is authorized to take such action as the nature of the cause and the interests of APIC, its policyholders, creditors, or the public may require including, but not limited to, the following:

- (i) Pursuant to 215 ILCS 5/193(1), the Liquidator shall proceed to take immediate possession and control of the property, books, records, accounts, business and affairs, and all other assets of APIC, and of the premises occupied by APIC for the transaction of its business, and to marshal and liquidate the assets business and affairs of APIC pursuant to the provisions of Article XIII of the Code, *supra*, and the Liquidator is further directed and authorized to wind down and terminate APIC's business and affairs, and to make the continued expenditure of such wages, rents and expenses as he may deem necessary and proper for the administration of APIC; and
- (ii) Pursuant to 215 ILCS 5/193(3), the Liquidator may both sue and defend on behalf of APIC, or for the benefit of APIC's policyholders and creditors, in the courts either in his name as the Liquidator of APIC, or in the name of APIC; and

G. All treaties, contracts and agreements of reinsurance, wherein APIC is the ceding company, shall remain in full force and effect pending a determination and recommendation by the Director as to when, and upon what terms, cancellation is appropriate; and

H. The caption in this cause and all pleadings in this matter shall read:

“IN THE MATTER OF THE LIQUIDATION OF
ASSOCIATED PHYSICIANS INSURANCE COMPANY”

I. All costs of these proceedings are taxed and assessed against the Defendant APIC; and

J. All direct policies and/or certificates of insurance heretofore issued by APIC are hereby canceled upon the following terms:

- (i) All direct policies and/or certificates of insurance which may give rise to “covered claims,” as defined in Sections 534.3 and 537.2 of the Code, 215 ILCS 5/534.3 and 537.2, of the Illinois Insurance Guaranty Fund or which may give rise to “covered claims” of a similar organization in any other state, as defined by the provisions of such similar statute in any such other state, shall be cancelled:
 - (a) At 12:01 a.m., local time of the insured or policyholder of any such direct policy and/or certificate of insurance, thirty-one (31) days after the date of the Agreed Order of Liquidation With a Finding of Insolvency is entered; or
 - (b) Upon the expiration date of any such direct policy and/or certificate of insurance, if the expiration date is less than thirty-one (31) days after the entry of the Agreed Order of Liquidation With a Finding of Insolvency; or
 - (c) Upon the date the insured or policyholder of any such direct policy and/or certificate of insurance replaces the direct policy and/or certificate of insurance, or on request effects cancellation, if the insured or policyholder does so within thirty-one (31) days after the entry of the Agreed Order of Liquidation With a Finding of Insolvency, whichever is earlier.
- (ii) All other direct policies and/or certificates of insurance issued by APIC shall be cancelled effective upon the entry of the Order prayed for herein; and

K. Pursuant to its authority under Section 189 of the Code, 215 ILCS 5/189, the Court hereby issues the following mandatory and prohibitive injunctions:

- (i) To enable the Liquidator to fulfill his statutory obligation to marshal the assets of this estate, including the investigation of potential claims of improper conduct against any person with respect to their dealings with the company as provided under Section 193(3) of the Code, 215 ILCS 5/193(3), all present and former accountants, actuaries, auditors, attorneys and consultants of APIC are ordered to deliver to the Liquidator, at his request, copies of all documents in their possession or under their control concerning or related to APIC, and to provide the Liquidator with such information as he may require concerning any and all business and/or professional relationships between them and APIC, and concerning any and all activities, projects, jobs and the like undertaken and/or performed by them at the request of APIC, or its respective agents, servants, officers, directors and/or employees, or which APIC may be, or is, entitled to as the result of its relationship with such accountants, actuaries, auditors, attorneys, and consultants; and
- (ii) APIC, and its respective directors, officers, agents, servants, representatives, employees, affiliated companies, and all other persons and entities, shall give immediate possession and control to the Liquidator of all property, business, books, records and accounts of APIC, and all premises occupied by APIC for the transaction of its business; and
- (iii) APIC's respective directors, officers, agents, servants, representatives, employees, affiliated companies, and all other persons and entities, having knowledge of this Order are restrained from transacting any business of APIC, or disposing of any company property or assets, without the express written consent of the Liquidator, or doing or permitting to be done any action which might waste the property or assets of APIC, until the further order of this Court; and
- (iv) The directors, officers, employees, agents, policyholders, service providers, and representatives of APIC, and all other persons and entities having knowledge of this Order, are restrained from bringing or further prosecuting any claim, action or proceeding at law or in equity or otherwise, whether in this State or elsewhere, against APIC or its property or assets, or the Director or Liquidator, except insofar as those claims, actions or proceedings arise in or are brought in the liquidation proceedings prayed for herein; or from obtaining, asserting or enforcing preferences, judgments, attachments or other like liens, including common law retaining liens, or encumbrances or the making of any levy against APIC, or its property or assets while in the possession or control of

the Liquidator, or from interfering in any way with the Liquidator in his possession or control of the property, business, books, records, accounts, premises and all other assets of APIC, until the further order of this Court; and

- (v) Any and all banks, brokerage houses, financial institutions and any and all other companies, persons or entities having knowledge of the Order, having in their possession accounts and any other assets which are, or may be, the property of APIC, are restrained from disbursing or disposing of said accounts and assets and are further restrained from disposing of or destroying any records pertaining to any business transaction between APIC, and such banks, brokerage houses, financial institutions, companies, persons or entities having done business, or doing business, with APIC, having in its possession assets which are, or may be, the property of APIC are ordered to immediately deliver any and all such assets and/or records to the Liquidator; and
- (vi) All agents and brokers of APIC, and its respective agents, servants, representatives and employees, and all other persons, are restrained from returning any unearned premiums, assessments or any money in their possession, or under their control, collected from premiums or assessments upon policies, contracts or certificates of insurance or reinsurance previously issued by APIC, to policyholders, or others, and all said agents and brokers, and APIC's agents, representatives, employees and servants are directed to turn over all such funds in their possession or under their control, or to which they may hereafter acquire possession or control, to the Liquidator in gross and not net of any commissions which may be due thereon; and
- (vii) All policyholders under policies or certificates of insurance issued by APIC, persons asserting claims against such policyholders, and creditors of APIC, and all other persons, companies and entities are restrained from instituting or pursuing any action or proceeding in any court or before any administrative agency, including boards and commissions administering workers' compensation or occupational diseases or similar laws of the State of Illinois, or any other state, or of the United States, which seek in any way, directly or indirectly, to contest or interfere with the Liquidator's exclusive

right, title and interest to funds recoverable under treaties and agreements of reinsurance or excess insurance heretofore entered into by or on behalf of APIC.

ENTERED

ENTERED: AUG 16 2001

JUDGE
BERNETTA D. BUSH - 1587

JUDGE PRESIDING

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