



Court: Shawnee County District Court
Case Number: 2019-CV-000351
Case Title: Vicki Schmidt - Commissioner of Insurance vs.
Physicians Standard Insurance Company
Type: Final Order and Judgment of Liquidation of
Physicians Standard Insurance Company

SO ORDERED.

A handwritten signature in black ink that reads "Richard D. Anderson". The signature is written in a cursive style with a long horizontal flourish at the end.

/s/ Honorable Richard Anderson, District Judge

**IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
DIVISION 2**

VICKI SCHMIDT,)	
COMMISSIONER OF)	
INSURANCE,)	
<i>In her Official Capacity,</i>)	
)	
Petitioner,)	
)	Case No. 2019 CV 351
vs.)	
)	
PHYSICIANS STANDARD INSURANCE)	
COMPANY,)	
)	
Respondent.)	

**FINAL ORDER AND JUDGMENT OF LIQUIDATION OF
PHYSICIANS STANDARD INSURANCE COMPANY**

Vicki Schmidt, the Kansas Commissioner of Insurance (“Commissioner”), in her capacity as the rehabilitator (“Rehabilitator”) of Physicians Standard Insurance Company (“PSIC”) has petitioned the Court for a final order and judgment of liquidation of PSIC under the Kansas Insurers Supervision, Rehabilitation, and Liquidation Act (“Act”), K.S.A. 40-3605, *et seq.* The Court, having reviewed the pleadings, exhibits, and presentation of counsel, finds and concludes as follows:

1. **Venue and Jurisdiction.** The Court has jurisdiction and venue is proper under K.S.A. 40-3608(e), 40-3620, and 40-3621.

2. **Grounds for Liquidation Asserted.** Under Kansas law, the Commissioner of Insurance may petition for an order of liquidation of an insurer (a) on “any grounds for an order of rehabilitation” under K.S.A. 40-3616,¹ regardless of whether any such order has been entered;

¹ K.S.A. 40-3616 authorizes the Commissioner to petition for an order of rehabilitation of an insurer “on any one or more of the following”: (a) the insurer’s transaction of business would be hazardous financially to its policyholders, creditors or the public; (b) embezzlement, wrongful sequestration, or diversion of the insurer’s assets, forgery or fraud, or other illegal conduct that would endanger assets in an amount threatening the solvency of the insurer; (c)

(b) when the “insurer is insolvent;” (c) when “the insurer is in such condition that the further transaction of business would be hazardous, financially or otherwise, to its policyholders, its creditors or the public.” K.S.A. 40-3621. The Rehabilitator seeks an order of liquidation of PSIC on each of the grounds permitted under K.S.A. 40-3621.

3. In this case, the Court has already determined that grounds exist for an order of rehabilitation of PSIC because (a) the company’s condition is such that the further transaction of business would be hazardous financially to its policyholders, creditors, or the public, and (b) the board of directors of PSIC consented to rehabilitation. Accordingly, the Court entered an Order of Rehabilitation of PSIC on August 20, 2019.

4. The Court finds that each of the grounds for liquidation under K.S.A. 40-3621 is satisfied based on the evidence presented, as follows.

- a. **PSIC is Insolvent.** The court hereby finds and declares under K.S.A. 40-3622(c) that PSIC is insolvent. Under Kansas law, an insurer is considered insolvent when it is “unable to pay its obligations when they are due, or when its admitted assets do not exceed its liabilities plus the greater of...[a]ny capital and surplus required by law... or the total par of stated value of its authorized and issued capital stock.” K.S.A. 40-3607(k)(2)-(3). In making an insolvency determination, the term “liabilities” must include “reserves required by statute or by insurance department general regulations or specific requirements imposed by the

failure to cooperate with the Commissioner’s request for examination of books and records; (d) control of the insurer is in an untrustworthy person; (e) an executive of an insurer refuses to submit to examination under oath and the insurer fails to terminate the affiliation with the executive; (f) the insurer has engaged in certain unauthorized transactions; (g) the insurer or its property is subject to another proceeding such that it may threaten the orderly delinquency proceeding in the state of Kansas; (h) failure to pay certain judgments; or (i) the board of directors of the insurer requests or consents.

commissioner upon a subject company at the time of admission or subsequent thereto.” *Id.*

- b. The Court has reviewed the financial statements and testimony relating to the financial condition of the company, which reflect that the company is insolvent as defined in K.S.A. 40-3607(k)(2). The Court further notes that no one has offered any evidence or argument contesting this insolvency determination. The determination that PSIC is insolvent is sufficient grounds to order liquidation of PSIC under K.S.A. 40-3621(b).
- c. **The Further Transaction of Business Would be Hazardous to Policyholders, Creditors, and Others.** The Court has reviewed evidence indicating PSIC’s management lacks the integrity and competence necessary to operate an insurance company, which poses a hazard to its policyholders, creditors, and others. This is an additional grounds supporting liquidation of PSIC.
- d. **Consent to Liquidation.** Finally, the Court notes that the Board of Directors of PSIC resigned effective August 19, 2019, and no board has been reconstituted since then. Thus, there is no board of directors to consent or object to liquidation. However, the majority shareholder of PSIC, Radiology Investment Group, LLC (“RIG”), by and through its managing member, Mark L. Gates, has confirmed in writing the majority shareholder’s consent to liquidation of the company.

5. **Appointment of Liquidator.** The Court appoints Vicki Schmidt, Commissioner of Insurance for the State of Kansas and her successors, as Liquidator of PSIC. The Liquidator is

directed to take possession of the assets of PSIC and to administer such assets under the general supervision of this Court. The Liquidator is hereby vested by operation of law with the title to all of the property, contracts and rights of action, and all of the books and records of PSIC, wherever located, as of the entry of this Order.

6. **Authority Granted to Liquidator.** The Liquidator is authorized and empowered to exercise all powers now held or hereafter conferred upon receivers by the laws of this state not inconsistent with the provisions of this act and to do all things permitted by K.S.A. 40-3605, *et seq.*, including, but not limited to, the following:

- a. **Appoint a Deputy Liquidator.** The Liquidator may appoint a special deputy or deputy liquidator and determine reasonable compensation for any such deputy. Any such deputy shall have all powers of the Liquidator granted by this section and shall serve at the pleasure of the Liquidator.
- b. **Retain Employees, Agents, and Professionals.** The Liquidator may consult with and obtain the assistance, services, and advice of employees, agents, and other professionals (e.g., attorneys, actuaries, accountants, appraisers, and insurance consultants) as necessary to assist in the liquidation, and to fix the reasonable compensation of such firms and individuals, with the approval of the Court.
- c. **Advisory Committee.** The Liquidator is authorized to appoint an advisory committee of policyholders, claimants or other creditors including guaranty associations should such a committee be deemed necessary in the discretion of the Liquidator. Such committee shall serve at the pleasure of

the Liquidator and shall serve without compensation other than reimbursement for personal travel and per diem living expenses.

- d. **Management of the Estate.** The Liquidator shall have all the powers of the officers, directors, trustees, managers, and employees, whose authority shall be suspended.
- e. **Property.** The Court authorizes and further directs the Liquidator to secure and take possession of all the assets, property, books, records, accounts and other documents of PSIC and to administer such assets under the general supervision of this Court. Pursuant to K.S.A. 40-3622(a), the Court hereby vests the Liquidator with the title to all of the property, contracts and rights of action, and all of the books and records of PSIC, wherever located, as of the entry of this Liquidation Order.
- f. **Compensation and Costs.** The Liquidator is authorized to pay reasonable compensation to persons appointed and to defray from the funds or assets of the insurer all expenses of taking possession of, conserving, conducting, liquidating, disposing of, or otherwise dealing with the business and property of the insurer.
- g. **Hearings and Subpoenas.** The Liquidator is authorized to hold hearings, to subpoena witnesses to compel their attendance, to administer oaths, to examine any person under oath, and to compel any person to subscribe to testimony of the person after the testimony has been correctly reduced to writing; and in connection therewith to require the production of any books, papers, records or other documents which are relevant to the

inquiry. Such hearings shall be held in accordance with the Kansas administrative procedure act.

- h. **Audits.** The Liquidator may audit the books and records of all agents of the insurer insofar as those records relate to the business activities of the insurer.
- i. **Debts Owed to PSIC.** The Liquidator is authorized to collect all debts and moneys due and claims belonging to the insurer, wherever located, and for this purpose:
 - i. To institute timely action in other jurisdictions, in order to forestall garnishment and attachment proceedings against such debts;
 - ii. To do such other acts as are necessary or expedient to collect, conserve or protect such insurer's assets or property, including the power to sell, compound, compromise or assign debts for purposes of collection upon reasonable terms and conditions; and
 - iii. To pursue any creditor's remedies available to enforce claims.
- j. **Sales of Property.** The Liquidator is authorized to conduct public and private sales of the property of the insurer; to acquire, hypothecate, encumber, lease, improve, sell, transfer, abandon or otherwise dispose of or deal with, any property of the insurer at its market value or upon such terms and conditions as are fair and reasonable; and to execute, acknowledge and deliver any and all deeds, assignments, releases and other instruments necessary or proper to effectuate any sale of property or other transaction in connection with the liquidation.

- k. **Transfer of Policy Obligations.** The Liquidator may use assets of the estate of PSIC to transfer policy obligations to a solvent assuming insurer, if the transfer can be arranged without prejudice to applicable priorities under K.S.A. 40-3641, and amendments thereto.
- l. **Loans.** The Liquidator may borrow money on the security of PSIC's assets or without security and execute and deliver all documents necessary to that transaction for the purpose of facilitating the liquidation. Any such funds borrowed may be repaid as an administrative expense and have priority over any other claims in class 1 under the priority of distribution.
- m. **Contracts.** The Liquidator is authorized to enter into such contracts as are necessary to carry out the order to liquidate, and to affirm or disavow any contracts to which the insurer is a party, except that no liquidator shall have the power to disavow, reject or repudiate:
 - i. Any federal home loan bank security agreement; or
 - ii. Any pledge, security, collateral or guarantee agreement or any other similar arrangement or credit enhancement relating to such security agreement.
- n. **Claims, Legal Proceedings, and Enforcement of Rights and Defenses.**
 - i. The Liquidator is authorized to continue to prosecute and to institute in the name of the insurer or in the Liquidator's name any and all suits and other legal proceedings, in this state or outside this state, and to abandon the prosecution of unprofitable claims.

- ii. The Liquidator is authorized to prosecute any action which may exist on behalf of the creditors, members, policyholders or shareholders of the insurer against any officer of the insurer, or any other person; to assert all defenses available to the insurer as against third persons, including statutes of limitation, statutes of frauds and the defense of usury. A waiver of any defense by the insurer after a petition in liquidation has been filed shall not bind the Liquidator. Whenever a guaranty association or foreign guaranty association has an obligation to defend any suit, the Liquidator shall give precedence to such obligation and may defend only in the absence of a defense by such guaranty associations;
- iii. The Liquidator is authorized to exercise and enforce all the rights, remedies and powers of any creditor, shareholder, policyholder or member; including any power to avoid any transfer or lien that may be given by the general law and that is not included with K.S.A. 40-3629 through 40-3631, and amendments thereto;
- iv. The Liquidator is authorized to intervene in any proceeding wherever instituted that might lead to the appointment of a receiver or trustee, and to act as the receiver or trustee whenever the appointment is offered.
- o. **Removal and Access to PSIC Books, Records, and Property.** The Liquidator is authorized to remove any or all records and property of the

insurer to the offices of the Commissioner or to such other place as may be convenient for the purposes of efficient and orderly execution of the liquidation. Guaranty associations and foreign guaranty associations shall have such reasonable access to the records of the insurer as is necessary for them to carry out their statutory obligations.

- p. **Bank Accounts.** The Liquidator is authorized to deposit in one or more banks in this state such sums as are required for meeting current administration expenses and dividend distributions;
- q. **Investments.** The Liquidator is authorized to invest all sums not currently needed, unless the court orders otherwise.
- r. **Deeds and Other Recorded Items.** The Liquidator is authorized to file any necessary documents for record in the office of any register of deeds or record office in this state or elsewhere where property of the insurer is located.
- s. **Coordination with Other Regulators.** The Liquidator may enter into agreements with any receiver or commissioner of any other state relating to the rehabilitation, liquidation, conservation or dissolution of an insurer doing business in both states.

7. **Permanent Injunction and Prohibition Against Former PSIC Affiliated Individuals and Entities.**

- a. **Directors, Officers, Employees, and Agents.** The Court directs and specifically orders that all officers, directors, employees, or agents of PSIC, or any other persons with authority over or in charge of any

segment of PSIC's affairs, are to cooperate with the Liquidator or her designee and must make available and promptly disclose to the Liquidator or her designee the nature, amount, and location of PSIC's property, and immediately surrender all such property to the Liquidator or her designee.

- b. The Court prohibits all officers, directors, employees, or agents of PSIC, individually or through any of their affiliated business entities, from the following:
 - i. Disposing, using, transferring, wasting, removing or concealing any property of PSIC, without the express written authority of the Liquidator;
 - ii. Doing, operating, or conducting PSIC's business or exercising any direction, control, or influence over PSIC's business, except through authority of the Liquidator or her designee;
 - iii. Using, releasing, transferring, selling, assigning, cancelling, hypothecating, withdrawing, allowing to be withdrawn, offsetting, asserting ownership of, concealing, in any manner, or removing from this Court's jurisdiction any of PSIC's property, wherever located, except through the authority of the Liquidator or her designee;
 - iv. Releasing, transferring, selling, assigning, or asserting ownership, in any manner, any claim, account receivable, or cause of action belonging to PSIC, whether asserted or not, except through the authority of the Liquidator or her designee;

- v. Obstructing or interfering in any way, directly or indirectly, with the Liquidator's access to PSIC's property, or any other property, books, documents, records, or other materials concerning PSIC's business, under whatever name they may be found;
 - vi. Obstructing or interfering in any way, directly or indirectly, with the conduct of this proceeding or any related proceeding.
- c. **Financial Institutions.** The Court prohibits any bank, savings and loan association or other financial institution or other legal entity from disposing of, allowing to be withdrawn, or concealing in any manner any property or assets of PSIC, except under the express authorization of the Liquidator or by the further order of this Court.

8. To insure the prompt and efficient administration of this estate, the Court clarifies that if the Liquidator requests any party, wherever located, to voluntarily surrender and/or turnover property or books or records of PSIC and such party refuses to do so, then such party shall be deemed to be in violation of this Order. To avoid violating this Order, a party who believes it is entitled to the property in question must promptly turn it over to the Liquidator upon request where it will be deemed to be held in trust by the Liquidator. Within thirty (30) days of such turnover, the party must then seek relief from this Court for a determination as to whom the property rightly belongs.

9. **Automatic Injunction and Stay of All Actions.** The Court immediately enjoins and stays all actions against PSIC, whether at law, equity or arbitration and wherever pending or located, including, but not limited to, any of the following actions:

- a. The commencement or continuation of any judicial, administrative, arbitration or other action or proceeding against PSIC, either before or after the commencement of this action;
- b. The enforcement, against PSIC or its property, of a judgment obtained before the commencement of this case;
- c. Any act to obtain possession of property (including, but not limited to, real property, personal property and intangible property such as lien rights) of PSIC or to exercise control over property of PSIC;
- d. Any act to create, perfect or enforce any lien against property of PSIC;
- e. Any act to avoid, void, invalidate, impair, destroy or otherwise alter (i) any lien (whether contractual or statutory), security interest, mortgage or deed of trust of PSIC in any real or personal property which secures any indebtedness owed to PSIC, or (ii) the proceeds of the sale of any real or personal property in which any lien, security interest, mortgage or deed of trust transferred or attached by operation of law or court order to any indebtedness owed to PSIC;
- f. Any act to create, perfect or enforce against property of PSIC any lien to the extent that such lien secures a claim that arose before the commencement of this case;
- g. Any act to collect, assess, or recover a claim against PSIC that arose before the commencement of this case; and
- h. The setoff of any debt owing to PSIC that arose before the commencement of this case against any claim against PSIC.

10. The Court notes that, pursuant to the Act (which has been adopted by Kansas and many other states), the courts of other states shall give full faith and credit to injunctions against the liquidator or the debtor insurance company or the continuation of existing actions against the liquidator or the insurance company. See, *e.g.*, K.S.A. § 40-3627(a); Mo. Rev. Stat. § 375.1188.1. The Court understands that the courts of other states shall honor these statutory requirements.

11. In addition to the injunction set forth above, the Court orders that, to the extent allowed by applicable law, all actions (including law, equity or arbitration) wherever located that are pending against PSIC or which implicate any property interest of PSIC shall be transferred to this Court for further adjudication. The Liquidator is directed to inform all state, federal, administrative or other arbitral tribunals presently overseeing any actions against PSIC of this Order and seek to transfer such matter to this Court as allowed by applicable law.

12. This Liquidation Order shall be liberally and broadly construed to the fullest extent allowed by state and federal law and provides that the enumeration of the powers and authority of the Liquidator shall not be construed as a limitation upon the Liquidator, nor shall it exclude in any manner the right to do such other acts not specifically enumerated or otherwise provided for, as may be necessary or appropriate for the accomplishment of or in aid of the purpose of the liquidation. Furthermore, the Liquidator shall be authorized and empowered to take whatever additional actions are deemed necessary to accomplish the full and complete liquidation of PSIC.

13. Notwithstanding the powers of the Liquidator as requested above, the Liquidator shall have no obligation to defend claims or to continue to defend claims subsequent to the entry of a Liquidation Order.

14. **Accounting.** Pursuant to K.S.A. 40-3622(d), the Liquidator shall provide on a semi-annual basis an accounting/report to the Court with the first report being due six-months from the date of this Liquidation Order.

15. **Notice and Bar Date.** Pursuant to K.S.A. 40-3626, the Liquidator is directed to give notice of this Liquidation Order as soon as reasonably possible to the parties specified therein, with a claim deadline (“Bar Date”) of May 15, 2020.

16. **Effective Date of this Order.** In order to provide clarity regarding the date of termination of coverage as addressed below in Section 17 (“Continuation of Coverage”), the effective date of this Final Order and Judgment of Liquidation shall be December 1, 2019.

17. **Continuation of Coverage.** Pursuant to K.S.A. 40-3623, all policies and insurance contracts issued by PSIC in effect at the time of the effective date of this Order, including, but not limited to, any obligation by PSIC to provide “tail” or “extended reporting period” coverage for claims arising after the termination of any policy, shall continue in force only until the earlier of any of the following:

- a. A period of 30 days from the date of entry of this Final Order and Judgment of Liquidation of PSIC;
- b. The expiration of the policy coverage;
- c. The date when the insured has replaced the insurance coverage with equivalent insurance in another insurer or otherwise terminated the policy;
or
- d. The Liquidator has effected a transfer of the policy obligation pursuant to K.S.A. 40-3625(a)(9)

18. On November 1, 2019, the Rehabilitator provided policyholders with written notice of cancellation of PSIC policies. Under the PSIC policy terms, cancellation is effective 60 days thereafter, meaning all PSIC policies are set to expire at 11:59 p.m. on December 31, 2019.

19. Factoring in the Rehabilitators' notice of cancellation issued on November 1, 2019, and pursuant to K.S.A. 40-3623 and the terms and effective date of this Order, ***all PSIC policy coverage will terminate on December 31, 2019 at 11:59 p.m.***

20. **Final Judgment.** This is a final judgment subject to an immediate right of appeal, except that this Court shall retain jurisdiction to issue further orders pursuant to the Act that may be necessary during any appeal, including ,but not limited to, an appeal pendency plan pursuant to K.S.A. 40-3622(e)(1).

21. This Court shall have exclusive jurisdiction over this proceeding or relief relating to this proceeding pursuant to the Act, and of PSIC's property, wherever located.

It is so ordered.

District Judge

Prepared by:

/s/ Kirsten A. Byrd

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