

FILED
DATE: May 2, 2023
TIME: 05/02/2023 10:25:19 AM
WAKE COUNTY
SUPERIOR COURT JUDGES OFFICE
BY: SS

NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
19 CVS 008664

MIKE CAUSEY, COMMISSIONER)
OF INSURANCE OF NORTH)
CAROLINA,)
)
Petitioner,)
)
v.)
)
SOUTHLAND NATIONAL)
INSURANCE CORPORATION,)
SOUTHLAND NATIONAL)
REINSURANCE CORPORATION,)
BANKERS LIFE INSURANCE)
COMPANY, COLORADO BANKERS)
LIFE INSURANCE COMPANY,)
North Carolina Domiciled Insurance)
Companies,)
)
Respondents.)

ORDER OF LIQUIDATION AGAINST
SOUTHLAND NATIONAL
INSURANCE CORPORATION AND
ORDER FOR INJUNCTIVE RELIEF

THIS CAUSE came to be heard on the 20th day of April, 2023 before the undersigned Judge Presiding over the Wake County Superior Court, upon the Motion of Mike Causey in his official capacity as Commissioner of Insurance of the State of North Carolina (the “Petitioner”), seeking the entry of an Order of Liquidation, declaration of insolvency, and injunctive relief against Southland National Insurance Corporation (“SNIC”);

Based upon the Motion, the court file herein, the evidence presented at the hearing, and the arguments of counsel, the Court finds:

1. Petitioner is the Commissioner of Insurance of the State of North

Carolina and initiated this action against SNIC, and the other named Respondents in his official capacity pursuant to N.C. Gen. Stat. §§ 58-30-15, 58-30-20, 58-30-100, 58-30-105, and Article 38 of Chapter 1 of the North Carolina General Statutes;

2. The purpose of Article 30 of Chapter 58 of the North Carolina General Statutes is to “protect the interests of policyholders, claimants, creditors, and the public generally . . . through . . . enhanced efficiency and economy of liquidation, through clarification of the law, to minimize legal uncertainty and litigation.” N.C. Gen. Stat. § 58-30-1(c)(3);

3. SNIC is a life, accident, and health insurance company as defined in Chapter 58 of the General Statutes of North Carolina; it is incorporated under the laws of the State of North Carolina and its registered home office is in Raleigh, NC;

4. On or about June 27, 2019, this Court entered an Order of Rehabilitation, Order Appointing Receiver and Order Granting Injunctive Relief against SNIC and the remaining above-named Respondents, with the written consent of the Respondents’ Directors and Controlling Shareholder, and the Court found that the Petition set forth sufficient grounds for an Order of Rehabilitation under N.C. Gen. Stat. § 58-30-75;

5. Under that Order, the Commissioner, as Rehabilitator, is administering the assets of SNIC, and the other Respondents in accordance with N.C. Gen. Stat. § 58-30-80, *et seq.*;

6. Pursuant to N.C. Gen. Stat. § 58-30-100, “[t]he Commissioner may petition the Court for an order directing him to liquidate a domestic insurer . . . on the basis . . . that the insurer is insolvent or that the insurer is in such condition that the further transaction of business would be hazardous, financial or otherwise, to its policyholders, its creditors, or the public.” N.C. Gen. Stat. § 58-30-100(2)-(3);

7. An insurance company is insolvent, if it “is unable to pay its obligations when they are due, or its admitted assets do not exceed its liabilities plus the greater of (i) any capital and surplus required by law for its organization; or (ii) the total par or stated value of its authorized and issued capital stock.” N.C. Gen. Stat. § 58-30-10(13). Liabilities “includes reserves required by statute, by Department rules, or by specific requirements imposed by the Commissioner upon a subject company at the time of admission or subsequent thereto, except those reserves that are an allocation of surplus as specified in [N.C. Gen. Stat. §] 58-65-95.” *Id.*;

8. Pursuant to N.C. Gen. Stat. § 58-19-10(b)(1), an insurer’s investments in affiliates or subsidiaries may not exceed the lesser of ten percent of the insurer’s admitted assets or fifty percent of the insurer’s policyholders’ surplus, provided that these investments will leave the policyholders’ surplus reasonable in relation to the insurer’s outstanding liabilities and adequate to its financial needs;

9. Accordingly, SNIC’s admitted assets as calculated below do not include

affiliated investments in excess of this statutory limit;¹

10. Petitioner sought to liquidate SNIC on March 12, 2021.

11. On July 7, 2021, the hearing on the Petition to liquidate SNIC was stayed based on the fact that Petitioner and SNIC's parent company, GBIG Holdings, Inc. ("GBIG") entered into an agreement that calls for GBIG to pay SNIC's Monthly Cash Requirements, as defined in the Escrow Agreement. If GBIG Holdings does not pay SNIC's Monthly Cash Requirements, SNIC is entitled to withdraw funds from the escrow account. GBIG Holdings then has the opportunity to replenish the escrow account to the original amount. If GBIG Holdings does not replenish the escrow account, Petitioner is allowed to request a liquidation hearing.

12. GBIG failed to make payments for the months of July 2021 through November 2021, which led to SNIC withdrawing \$6,347,130.86 from the Escrow Account. GBIG did not replenish those funds within 15 days of the withdrawal, and Petitioner requested a hearing on the Liquidation Petition.

13. Prior to the liquidation hearing, Petitioner and GBIG entered into another agreement, under which GBIG: (1) replenished the Escrow Account; and (2) GBIG and Greg Lindberg consented to the entry of an Order of Liquidation upon GBIG's failure to timely replenish the escrow account after notice as called for under the Escrow Agreement, if, at the time, the most recent Quarterly Report for SNIC

¹ However, even if the affiliated investments were treated as admitted assets for purposes of the insolvency calculation, SNIC still would be insolvent under the meaning of the statute.

shows that its admitted assets do not exceed its liabilities plus the greater of (i) any capital and surplus required by law for its organization; or (ii) the total par or stated value of its authorized and issued capital stock. This agreement was memorialized in a Joint Motion to Stay Proceedings, which was filed with this Court on March 10, 2022.

14. GBIG failed to make the required monthly payments to SNIC for the months of October, November, and December of 2022. Pursuant to the Escrow Agreement, on February 21, 2023, SNIC directed the Escrow Agent to release to SNIC \$3,964,907.39 of the Escrow Funds. Under the terms of the Escrow Agreement, GBIG was required to replenish the Escrow Account by depositing \$3,964,907.39 into that account no later than March 8, 2023. GBIG did not make the required deposit.

15. Based upon the Rehabilitator's Quarterly Court Report of SNIC, as of September 30, 2022, SNIC had admitted assets of \$105,523,372.00, liabilities of \$293,959,242.00, and the par value of its stock was \$1,502,718.00.² Therefore, the liabilities of SNIC, exceeded its admitted assets and the par value of its stock by \$189,938,588.00, and SNIC is insolvent within the meaning of N.C. Gen. Stat. § 58-30-10(13);

16. SNIC is insolvent and is in such condition as to render the continuance of its business hazardous, financially, or otherwise, to its

² The calculation of insolvency pursuant to Section 58-30-10(13), calls for using the greater of the capital and surplus requirements for the company or the total par value of the stock. Pursuant to N.C. Gen. Stat. § 58-7-75(1) the total capital and surplus required by law for SNIC is \$1,250,000, which is less than the par value of its stock.

policyholders, its creditors or the public within the meaning of N.C. Gen. Stat. § 58-30-100(2)-(3);

17. Based on the foregoing, Petitioner is entitled to the entry of an order of liquidation and declaration of insolvency against Respondent SNIC.

18. Petitioner is entitled to appointment as Liquidator of SNIC under the provisions of N.C. Gen. Stat. Chapter 58, Article 30;

19. Upon the entry of an Order of Liquidation, it is in the public interest that the Court enter a preliminary injunction which prohibits the disposition, waste or impairment of the property of SNIC, the unauthorized transaction of further business on behalf of SNIC, requires the transfer of all property of SNIC to Petitioner, prevents interference with the Petitioner or this proceeding, prohibits the commencement or prosecution of any actions against the Petitioner or SNIC, and prohibits any party or person from obtaining preferences, judgments, attachments or other liens, or the initiation of any levy against SNIC or any of their general assets;

20. Each state where SNIC is or was licensed to engage in the business of insurance has established a life and health insurance guaranty association (“Guaranty Association”) to provide protection to policyholders and beneficiaries of insurance products in the event an insurer, such as SNIC, is placed into liquidation with a finding of insolvency, subject to certain statutory limits, as provided for in the state legislation creating each such

Guaranty Association (referred to herein as “G.A. Enabling Act(s)”). *See, e.g.*, N.C. Stat. §§ 58-62-2, *et seq.* (establishing the North Carolina Life and Health Insurance Guaranty Association);

21. At the request of an applicable Guaranty Association to facilitate the transition to liquidation, the Liquidator shall continue to collect premiums, pay claims, and otherwise administer or arrange for the administration of the SNIC policies covered by such Guaranty Association as needed, subject to fair and reasonable terms and reconciliation as may be agreed to by the Liquidator and such Guaranty Association.

IT IS, THEREFORE, ORDERED:

1. Mike Causey, Commissioner of Insurance of the State of North Carolina, and his successors in office, are hereby appointed as Liquidator of SNIC, and that the Liquidator is hereby vested with all duties, powers, authority, and obligations as are provided by Chapter 58, Article 30 of the North Carolina General Statutes;

2. This Order of Liquidation shall immediately become effective for all purposes under Chapter 58 of the North Carolina General Statutes (including but not limited to N.C. Gen. Stat. §§ 58-30-105 and 58-30-110) with SNIC declared insolvent and placed into liquidation;

3. The Liquidator is hereby vested with the title to all assets of SNIC and that the filing or recording of this Order with the Clerk of the Superior Court

and the Register of Deeds of the County in which SNIC's principal office or place of business is located—or, in the case of real estate, with the Register of Deeds of the county where the property is located—shall impart the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with that Register of Deeds, would have imparted;

4. The Liquidator shall take into his possession and control all property, stocks, bonds, securities, bank accounts, savings accounts, monies, accounts receivable, books, papers, records, data bases, printouts and computations, whether stored by microfilm, electronic, optical, magnetic or other means, whether stored in tapes, disks, or other media, and that all other assets of any and all kinds and nature whatsoever belonging to SNIC, wherever located shall be delivered to the Liquidator;

5. The Liquidator shall administer SNIC's assets and affairs under the general supervision of this Court;

6. The Liquidator is hereby vested with the powers and duties of a receiver under all other applicable laws of the State of North Carolina;

7. Pursuant to N.C. Gen. Stat. § 58-30-120, the Liquidator is authorized to appoint one or more Special Deputy Liquidators to act for the Liquidator in connection with the delinquency proceedings against SNIC and such Special Deputy Liquidator(s) are authorized to employ and discharge at the prevailing customary rates such counsel, clerks or assistants as the Liquidator or such

Special Deputy Liquidator(s) shall deem to be necessary, or to utilize State employees for said purposes if he has determined that the use of State employees to conduct certain aspects of the liquidation is the most cost effective method of administering the delinquency proceeding and that this action benefits the estate and its creditors; and to further authorize such Liquidator or Special Deputy Liquidator(s) to obtain such bonds, errors and omissions type insurance, or excess liability insurance in addition to any such insurance that may be already provided for employees of the Department of Insurance, as a reasonably prudent person charged with the duties would deem to be appropriate; and that all expenses of taking possession of and administering and conserving SNIC, its assets and property, and of conducting the delinquency proceedings against SNIC and otherwise dealing with its business and property, whether incurred by or at the direction of the Rehabilitator or any Special Deputy Rehabilitator or by the Liquidator and any Special Deputy Liquidator, including all such expenses associated with the period during which SNIC was in Rehabilitation, shall be paid out of the funds or assets of SNIC pursuant to N.C. Gen. Stat. § 58-30-120(a)(4) and considered class-one claims under N.C. Gen. Stat. § 58-30-220(1), all in accordance with Article 30 of Chapter 58 of the North Carolina General Statutes;

8. The Liquidator is hereby authorized, empowered and directed to incur such expenses for communication and traveling expenses for himself, his

agents or attorneys as may be necessary in the proper administration of his duties as Liquidator and also to incur such other expenses as the Liquidator may deem advisable or necessary in order to properly conduct and perform his duties as Liquidator and that any compensation and expenses paid by the Liquidator be reported to the Court and approved on an interim basis subject to the jurisdiction of the Court to approve the amounts of final compensation and expenses;

9. The Liquidator is authorized to notify state or federal regulators of this action, and to take any action relating to the licenses or certificates of SNIC as may be required to carry out the Order of Liquidation;

10. The Liquidator is relieved from the notice requirements of N.C. Gen. Stat. § 58-30-125(a)(3), to the extent that they may apply, as SNIC has no insurance agents presently;

11. Injunctive relief is hereby granted pursuant to N.C. Gen. Stat. §§ 58-30-20 and 58-30-130 to prohibit any person from interfering in any manner with the property or assets of SNIC or with the Liquidator in the performance of his duties, and injunctive relief is further granted to enforce the automatic, nondiscretionary statutory prohibition against any person from instituting or prosecuting any suit or other action against the Liquidator, SNIC, or SNIC's property or assets, including counterclaims or crossclaims; to stay all persons, firms and corporations with notice of the Court's Order from the obtaining of preferences, judgments, attachments, garnishments, or liens

against SNIC or its property or assets, or the levying of execution or foreclosure against SNIC or its property or assets, until further order of the Court; to enjoin and restrain SNIC, its trustees, officers, directors, agents, employees, or third party administrators, and all other persons from the disposition, waste or impairment of any of SNIC's property, assets, or records; to enjoin the transaction of further business unless supervised and approved by the Liquidator or his agents or deputies, until further order of the Court; to order all such persons to transfer to the Liquidator any and all property or assets of SNIC wheresoever situated, and enjoin and restrain SNIC, its trustees, officers, agents, servants, employees, third party administrators, directors or attorneys from doing or permitting to be done anything which may allow or suffer the obtainment of preferences, judgments, attachments or other liens, or the initiation of a levy against SNIC or its property or assets;

12. Pursuant to N.C. Gen. Stat. §§ 58-30-105(b) and 58-30-110, the rights and liabilities of SNIC's creditors, policyholders, shareholders, and all other person shall be fixed as of the date of entry of the Order of Liquidation;

13. Any claims filed against SNIC in the liquidation must be filed within two years of the date of entry of the Order of Liquidation;

14. The Liquidator, at the request of an applicable Guaranty Association, shall continue to collect premiums, pay claims, and otherwise administer SNIC policies covered by such Guaranty Association as needed, subject

to fair and reasonable terms and reconciliation as may be agreed to by the Liquidator and such Guaranty Association;

STAY OF PENDING ACTIONS

15. Any and all pending actions against Respondent SNIC are hereby stayed;

INJUNCTION AGAINST ACTIONS BY CREDITORS

16. All persons, firms and corporations receiving actual notice of the Court's Order are hereby enjoined from obtaining preferences, judgments, attachments, garnishments, or liens against SNIC, or its assets, or the levying of execution or foreclosure against SNIC or its assets until further order of the Court;

INJUNCTION AGAINST WASTE; TRANSACTION OF BUSINESS

17. SNIC, its trustees, officers, directors, agents, employees, owners, and all other persons are hereby enjoined and restrained from the disposition, waste or impairment of any of SNIC's property or the transaction of further business unless supervised and approved by the liquidator or his agents or deputies until further order of the Court, and all such persons are hereby required to transfer to the liquidator any and all property of the Respondent wheresoever situated;

INJUNCTION AGAINST OBTAINMENT OF PREFERENCES

18. SNIC, its trustees, officers, agents, servants, employees, owners, directors and attorneys are hereby enjoined and restrained from doing or permitting to be done anything which may allow or suffer the obtainment of preferences,

judgments, attachments or other liens, or the initiation of a levy against SNIC, without prior permission of this Court;

ACCOUNTING AND REPORTING

19. Pursuant to N.C. Gen. Stat. § 58-30-105(e), the liquidator shall make a quarterly report to the Wake County Superior Court, and the liquidator shall include in the report a statement of receipts and disbursements to date and a balance sheet; that this accounting shall be filed in duplicate; that one copy shall be filed with the Clerk of Superior Court and one copy shall be submitted to the Judge presiding over the liquidation; that the requirement of this Order shall be satisfied by filing the accounting as provided and the liquidator shall not be required to seek the Court's approval of said accounting; that this accounting may be amended or supplemented in the liquidator's discretion;

COMMISSIONER'S BOND

20. The official bond of the Petitioner, the Commissioner of Insurance of the State of North Carolina, shall be sufficient to serve for the faithful performance of his duties and obligations herein imposed.

This 27th day of April, 2023.



The Honorable A. Graham Shirley, II
Judge of Superior Court

4/27/2023 3:59:32 PM