

FILED
05-18-2020
CIRCUIT COURT
DANE COUNTY, WI
DANE COUNTY
2020CV001054
Honorable Richard G
Niess
Branch 9

STATE OF WISCONSIN : CIRCUIT COURT : DANE COUNTY

In the Matter of the Rehabilitation of:

Case No.

Time Insurance Company
c/o: Office of the Commissioner of Insurance
125 South Webster Street
Madison, WI 53703

Case Code: 30703

**NOTICE OF VERIFIED PETITION AND
VERIFIED PETITION FOR ORDER FOR REHABILITATION**

TO: All Interested Parties

NOTICE

PLEASE TAKE NOTICE that the Petitioner, Mark Afable, Commissioner of Insurance of the State of Wisconsin (the “Commissioner”), brings this Verified Petition for Order for Rehabilitation (the “Verified Petition”) for hearing before the Circuit Court of Dane County, in the Dane County Courthouse, 215 South Hamilton Street, Madison, WI 53703-3285, on a date and at a time to be determined by the Court. Written objections to the Verified Petition and the proposed Order for Rehabilitation, along with supporting documentation, shall be filed with the Court and served on the Commissioner, by his attorneys, James A. Friedman and Zachary P. Bemis of Godfrey & Kahn, S.C., within 60 days of the date of the Petition. The Commissioner shall file and serve any responsive pleadings by no later than 75 days from the date of the Petition.

VERIFIED PETITION

Mark Afable, Commissioner of Insurance of the State of Wisconsin (the “Commissioner” or the “Petitioner”), hereby petitions the Court, pursuant to Wis. Stat. § 645.31, to enter an Order

of Rehabilitation for Time Insurance Company (“Time” or the “company”). As grounds for this Petition, the Commissioner states as follows:

1. He is the duly appointed and confirmed Commissioner of Insurance of the State of Wisconsin, and he makes this Verified Petition as he is authorized to do, pursuant to Wis. Stat. § 645.31.

BACKGROUND

2. Time is a Wisconsin domestic, stock, life, accident and health insurance company. Time originally was licensed as an insurer on February 4, 1910. Before being acquired by its current owner, Haven Holdings, Inc. (“Haven”), Time was owned by Interfinancial Inc. and under the ultimate control of Assurant, Inc., which owned 100% of the outstanding voting stock of Interfinancial. In late 2014, Assurant exited the accident and health segment of the insurance market to focus on other business segments, and it made the decision to discontinue operations of Time Insurance Company and put the company into run-off.

3. On October 17, 2018, the Wisconsin Office of the Commissioner of Insurance (the “OCI”) issued an Order (the “2018 Order”) approving the acquisition of Time Insurance Company by Haven, its redomestication to Puerto Rico, and its merger into Haven Insurance Company II (the “Transaction”). The new company was licensed in Puerto Rico as “Time Insurance Company II.” While considering granting regulatory approval for the Transaction, the OCI identified concerns that Time would not have enough capital to comply with Wisconsin’s risk-based capital (“RBC”) regulations and that, absent any other arrangement, Time would be left with an RBC of about 33 percent, which would require rehabilitation or liquidation of the insurance operations and would trigger grounds for disapproval under Wis. Stat. § 611.72. To

prevent the noncompliance with RBC regulations, Haven submitted updated projections, indicating much of Time's book of business would be segregated into three different segregated asset plans, one for each primary reinsurance treaty (John Hancock Life Insurance Company ("John Hancock"), Prudential and Talcott - formerly reinsured by Hartford Life and Annuity Insurance Company, and Integon). At that time, the OCI accepted Haven's rationale that the vast majority of Time's risk was 100% reinsured, and the company only would need capital to support approximately 150 directly insured policies. The 2018 Order included exit conditions related to the maintenance of the certain reinsured blocks of business and risk-based capital requirements for Time.

4. On December 5, 2018, the Puerto Rico Office of the Commissioner of Insurance approved the acquisition, merger, and redomestication, and approved the surviving entity, Time Insurance Company II, as a Class 5 International Insurer.

5. Following the approval of the redomestication and merger, Time began efforts to recapture the fully reinsured life policies and long-term care policies. On July 2, 2019, within six months after the OCI approved the acquisition and redomestication to Puerto Rico, Time filed a transaction with the Puerto Rico OCI to recapture the long-term care block of business reinsured by John Hancock. On July 16, 2019, the OCI issued a cease and desist order preventing the reinsurance recapture transaction and preventing Time from, *inter alia*, writing new business and renewing existing business in the state of Wisconsin and recapturing any Wisconsin risks from any reinsurer. Several additional states issued similar cease and desist orders.

6. On December 12, 2019, management of Time made a presentation to all states regarding its financial condition and the proposed reinsurance recapture transaction.

Management of Time reported that, without approval of the proposed reinsurance recapture transaction, Time “will not be able to fund its business indefinitely going forward.” Time reported that if it calculated its RBC without giving effect to the segregated asset plans, as permitted in Puerto Rico, the company would be at the mandatory control level event. Under National Association of Insurance Commissioners (“NAIC”) accreditation requirements, a mandatory control level event requires a commissioner to either place an insurer under insolvency protection or grant the insurer 90 days to attempt to remedy its financial deficiencies. *See, e.g.*, Wis. Admin. Code § Ins 51.40. The company further presented an insurer insolvency expert who opined that without the transaction, Time would likely need to be placed into liquidation.

7. On December 19, 2019, the OCI issued an amended cease and desist order, continuing to prohibit Time from engaging in any reinsurance recapture transaction and finding that the transfer of risk for the long-term care policies from a solvent reinsurer to a financially distressed, international insurer is not in the best interest of Wisconsin insureds or the public. Specifically, OCI issued findings identifying concerns with Time’s methods and practices of doing business, including:

- a. Time’s use of segregated asset plans, which are not considered by the NAIC RBC calculation instructions, and which could obscure Time’s required RBC reporting;
- b. The ceding of risk to an international insurer that does not meet accreditation requirements of a multi-state insurer;

c. The proposed movement of a material amount of capital support for the long-term care policies to an intermediate holding company where it could be used for other purposes after three years;

d. The lack of capital contribution or capital commitment from Time's parent company; and

e. The viability of the transaction being predicated on a rate of return on investment that is unlikely to occur without significant investment risk.

8. As the result of continued objections from several states, Time did not complete the proposed reinsurance recapture transaction and indicated that it would seek to convert from a Puerto Rico International Insurer and redomicile as a life and health insurer in another U.S. jurisdiction.

9. On February 28, 2020, the Acting Commissioner of Puerto Rico, Time and the Commissioner agreed that Time would redomesticate to Wisconsin. Pursuant to a Stipulation and Order signed that day and approved by the Commissioner (the "2020 Stipulation and Order"), Time was redomesticated to Wisconsin. Furthermore, pursuant to the 2020 Stipulation and Order, the OCI issued a new certificate of authority for Time Insurance Company as a Wisconsin domestic insurer, effective February 28, 2020. A May 6, 2020 letter from the Puerto Rico Office of the Commissioner of Insurance confirmed the redomestication of Time to Wisconsin.

10. Because Time's RBC was at a mandatory control level event, on February 28, 2020, the Commissioner also issued an Order limiting Time's operations ("Order Limiting Operations") to protect the interests of policyholders, creditors, and the general public. The Order directed Time to:

- a. Cease and desist from engaging in any transactions that require submission of form filings;
- b. Continue to service existing business, pay fees and taxes, and submit annual statements and other interim financial statements and Holding Company Act filings;
- c. Continue making routine payments of salary to employees, payments to professionals in the ordinary course, reinsurance payments, and claim payments;
- d. Cease making payments or distribution to creditors, payments or distributions to principles, or nonroutine payments, unless 30-day prior notice has been provided to the Commissioner, and the payment or distribution has not been disapproved; and
- e. Before liquidating or making further investments, provide to the Commissioner notice of the proposed investment 30 days before its effective date and subject to the Commissioner's disapproval.

RETROCESSION TRANSACTION

11. The 2020 Stipulation and Order permitted Time, upon becoming a Wisconsin domestic insurer again, to enter into a transaction (the "Retrocession Transaction") relating to one of its existing reinsurance treaties.

12. The Retrocession Transaction was intended to allow Time to seek to address Time's solvency issues, including its trigger of a mandatory control level event. The Stipulation and Order outlined the structure of the transaction that the OCI would approve, including:

- a. Authorizing Time to reach an agreement with its long term care reinsurer whereby the reinsurer's obligations to reinsure Time's long term care block of business

could be 100% retroceded by Time’s affiliate, Haven Reinsurance Company II (“Haven Reinsurance”);

- b. Requiring Time to maintain appropriate reserves – initially of at least \$2.7 billion – through a funds withheld reinsurance agreement with Haven Reinsurance ; and
- c. Requiring Time to maintain an RBC ratio of 450%.

13. A March 31, 2020 amendment to the 2020 Stipulation and Order allowed Time to propose alternative forms of the transaction, including novation, that are consistent with the other terms and subject to the OCI’s final approval.

14. On April 3, 2020, Time filed its Annual Statement for the Year 2019 with the OCI. The Annual Statement notes that “[t]he Company’s ability to continue as a going concern is dependent on approval of the remedial plan by the WI OCI and the PR OCI and the timely closing of the Novation Transaction.”

15. On March 12, 2020, Time submitted a proposal for an “initial plan” to the OCI as permitted by the 2020 Stipulation and Order. The key component of the initial plan was a novation transaction, not a retrocession, whereby the existing reinsurance agreement would be novated to Haven Reinsurance, and Haven Reinsurance would assume all obligations under the reinsurance agreement.

16. On May 15, 2020, the OCI determined, pursuant to Wis. Stat. 617.21(3), that the proposal was contrary to the interests of policyholders, Time’s creditors, and the public. Contrary to the OCI’s preference, the initial plan is for a novation of the reinsurance agreement to Haven Reinsurance, rather than a retrocession of the reinsured’s block of business.

17. Under the initial plan, Time’s long term care reinsurer no longer would be obligated to bear any risk and the viability of the transaction would be dependent on the capital

surplus of Time and Haven Reinsurance. The OCI has determined that, under the proposed transaction, there would be insufficient surplus available to support reserves such that a small adverse development in the long-term care reserves would lead to Time's insolvency. As such, the OCI has determined that Time would remain financially hazardous even if the transaction were completed. In addition, at the time of the decision, nine states had current cease and desist orders issued to Time. Discussions with those states indicates it is unlikely that several of the states would rescind their cease and desist orders, and having a majority of states was a necessary precursor for the transaction to move forward. Hence, the proposal submitted March 12, 2020, fails to adequately address the OCI's concerns and fails to address Time's ongoing insolvency. Hence, the OCI has determined that rehabilitation is the only remaining option.

REHABILITATION PROCEEDING

18. The grounds for rehabilitation are as follows:

- a. Time is or is about to become insolvent [Wis. Stat. § 645.41(2)];
- b. The shareholder of Time entitled to vote consents to rehabilitation (*see attached*) [Wis. Stat. § 645.41(14)];
- c. Time does not satisfy the requirements that would be applicable if Time were seeking initial authorization to do an insurance business in this state [Wis. Stat. § 645.41(9)]; and
- d. The Commissioner believes that Time may be successfully rehabilitated without any substantial increase in the risk of loss to creditors of Time or to the public [Wis. Stat. § 645.31(1)].

19. The rehabilitation of Time will maximize the recovery of, and be in the best interest of, creditors of Time.

20. Pursuant to the February 28, 2020 Stipulation and Order, Time and Haven Holdings, Inc. have agreed to not object to the Commissioner having jurisdiction over any insolvency proceeding.

POWERS AND DUTIES OF REHABILITATOR; PLAN FOR REHABILITATION

21. The Commissioner hereby seeks authorization from the Court, pursuant to Wis. Stat. § 645.33(1), to appoint Mark Femal of Strohm Ballweg as the Special Deputy Commissioner for purposes of overseeing the rehabilitation process. The Commissioner requests that Mr. Femal serve without bond. Mr. Femal possesses over 35 years of experience in the insurance industry. He was the Executive Director at the Wisconsin Insurance Security Fund from 1993 to 2006. While with Strohm Ballweg, Mr. Femal has worked on many insurer insolvencies, representing the National Organization of Life and Health Guaranty Associations, and he assisted the OCI in closing the American Star Insurance Company estate. He also has specialized understanding of the long-term care market and insolvency proceedings. The Commissioner believes that Mr. Femal is qualified to be Special Deputy Commissioner. Pending further notice and Court approval, Mr. Femal will serve as Special Deputy Commissioner for this rehabilitation proceeding with compensation, benefits, and reimbursement of administrative expenses paid for from the rehabilitation estate.

22. Pursuant to Wis. Stat. § 645.33(2), the Commissioner hereby also seeks authorization from the Court to coordinate and conduct business and administrative activities for Time and to grant the Commissioner and his Special Deputy the authority to operate the company with full power authorized by that section to reform and revitalize the insurer.

23. To date, the Commissioner has written engagements in place with Godfrey & Kahn, S.C., and the Commissioner, as rehabilitator, anticipates utilizing various other

professionals in the course of the rehabilitation of Time. Pursuant to Wis. Stat. § 645.33(3), the Commissioner, as Rehabilitator, hereby seeks authorization from the Court to continue utilizing the services of existing and additional professional consultants and experts, including incurring fees and expenses that are reasonable and necessary, provided that any such contracts shall first be disclosed for approval by the Court.

24. The Commissioner shall, within 30 days of the filing of this Verified Petition, provide notice of the Verified Petition and the proposed Order of Rehabilitation, to all creditors of Time, current in-force policyholders and insureds of Time, claimants of Time, reinsureds of Time, individuals and entities against whom Time has or may have a claim, and all other interested parties (collectively, the “interested parties”), as follows:

- a. If Time or the Commissioner has a mailing address for the interested party, by mailing via first class mail a copy of the Verified Petition and the Proposed Order for Rehabilitation; and,
- b. For all other interested parties, by publishing in newspapers likely to apprise the interested parties and by placing on the OCI’s web site the Verified Petition, and proposed Order for Rehabilitation.

25. The Commissioner intends to file a plan of rehabilitation within 60 days of the Court’s entry of the Order for Rehabilitation.

WHEREFORE, the Petitioner requests that the Court enter the accompanying Order for Rehabilitation.

Dated at Madison, Wisconsin, this 18th day of May 2020.

Respectfully submitted,

GODFREY & KAHN, S.C.

James A. Friedman

State Bar No.: 1020756

Zachary P. Bemis

State Bar No.: 1094291

P. O. Box 2719

Madison, WI 53701-2719

Tel: (608) 257-3911

By: *Electronically signed by James A. Friedman*

James A. Friedman

Zachary P. Bemis

Attorneys for Petitioner Mark Afable,

Commissioner of Insurance of the State of

Wisconsin

22306372.2

ATTACHMENT

**ACTION BY UNANIMOUS WRITTEN CONSENT
OF THE SOLE SHAREHOLDER OF
TIME INSURANCE COMPANY**

May 18, 2020

The undersigned, **Haven Time IHC LLC**, a limited liability company organized under the laws of the Commonwealth of Puerto Rico (the “**Shareholder**”), acting in its capacity as the sole shareholder of **Time Insurance Company**, a Wisconsin life insurance company (the “**Company**”), and acting by unanimous written consent without a meeting in accordance with the Company’s By-laws, hereby adopts the following resolutions, which resolutions shall be as valid and effective as resolutions adopted at a duly convened meeting of the shareholders of the Company:

WHEREAS, on May 14, 2020, the Wisconsin Office of the Commissioner of Insurance (the “**OCI**”) informed the Company that it intended to commence a rehabilitation proceeding pursuant to Wis. Stat. § 645.31(1);

WHEREAS, the OCI has cited the following as grounds for rehabilitation:

- (i) the Company is or is about to become insolvent [Wis. Stat. § 645.41(2)];
- (ii) the Company does not satisfy the requirements that would be applicable if the Company were seeking initial authorization to do an insurance business in the State of Wisconsin [Wis. Stat. § 645.41(9)]; and
- (iii) the Commissioner believes that the Company may be successfully rehabilitated without any substantial increase in the risk of loss to creditors of the Company or to the public [Wis. Stat. § 645.31(1)];

WHEREAS, the OCI has stated its belief that the rehabilitation of the Company will maximize the recovery of, and be in the best interest of, the creditors of the Company;

WHEREAS, the OCI has requested that the Company consent to the commencement of the rehabilitation pursuant to Wis. Stat. § 645.31(14);

WHEREAS, the OCI has provided a draft Petition for Order for Rehabilitation to the Company for its consideration in the form attached hereto as Exhibit A (the “**Petition**”);

WHEREAS, the Shareholder deems consenting to the Petition to be advisable and in the best interest of the policyholders of the Company, as well as the creditors of the Company, the shareholders of the Company and the Company itself, based on the following:

- (i) the Shareholder’s receipt of privileged and confidential legal advice from receivership and regulatory-experienced counsel;
- (ii) the Shareholder’s business judgment that the rehabilitation of the Company will be in the best interests of policyholders;
- (iii) the Shareholder’s business judgment that the rehabilitation of the Company will maximize the recovery of, and be in the best interest of, the creditors of the Company;

- (iv) the Shareholder's business judgment that the rehabilitation of the Company will maximize the recovery of, and be in the best interest of, the shareholders of the Company;
- (v) the Shareholder's understanding based on receipt of privileged and confidential legal advice from receivership and regulatory-experienced counsel that any proposed rehabilitation plan (a "Plan") will, *inter alia*:
 - (a) be designed to "reform and revitalize" the Company pursuant to Wis. Stat. § 645.33(2);
 - (b) satisfy the *Carpenter* and *Nebblett* "standard" so that the outcome for the Company's creditors would be "no less favorable than creditors would receive in a liquidation;"
 - (c) require that any transaction proposed in a Plan "be without prejudice to applicable priorities" established under Wis. Stat. § 645.68 pursuant to Wis. Stat. § 645.46(8);
 - (d) require that any transaction proposed in a Plan be "at market value or upon fair and reasonable terms and conditions," pursuant to Wis. Stat. § 645.46(9);
 - (e) require that the reserves supporting the reinsurance obligations of the John Hancock Life Insurance Company (U.S.A.) ("John Hancock") to the Company relating to its long-term care block of insurance policies be strengthened by approximately \$623 million to \$2.7 billion;
 - (f) not allow any private sale of the Company's assets or retrocession or novation of the Company's policy's without notice to the Company and the opportunity to be heard at a court hearing;
 - (g) require court approval after a "full hearing" and will afford the Company the ability to comment on, or object to, the Plan; and
- (vi) discussions between the Company's representatives and the OCI that the Plan will be premised on the transaction proposed to the OCI involving Haven Reinsurance Company II reinsuring the long-term care block of insurance policies currently reinsured by John Hancock as more fully described in the Form D filed by the Company with the OCI on March 27, 2020, with such changes as the OCI deems necessary for the protection of the Company's policyholders;

NOW THEREFORE LET IT BE:

RESOLVED, that the Company's consent to the OCI's filing of the Petition be, and hereby is, approved;

RESOLVED, that the OCI may rely on these Resolutions and provide a copy thereof to the court to support its filing of the Petition;

RESOLVED, that it is the Company's intent to continue working cooperatively with OCI and any duly appointed Special Deputy Commissioner to evaluate and monitor the Company's financial condition;

RESOLVED, that the Company expressly reserves any and all of its rights, claims and defenses going forward in connection with any receivership proceeding and any and all rights to oppose any Plan proposed in an such proceeding;

RESOLVED, that the Chief Executive Officer, President, Chief Operating Officer, Chief Financial Officer, Treasurer and Secretary and any other officer of the Company (each such person, an "**Authorized Officer**") be, and each of them hereby is, authorized and empowered to take all such further action and to execute and deliver all such further agreements, certificates, instruments and documents, in the name and on behalf of the Company, and if requested or required, under its corporate seal duly attested by the Secretary; to pay or cause to be paid all expenses; to take all such other actions as they or any one of them shall deem necessary, desirable, advisable or appropriate to consummate, effectuate, carry out or further the intent and purposes of the foregoing resolutions;

RESOLVED, that each of the Authorized Officers be, and each of them hereby is, authorized and empowered to take all such further action to obtain any required third party or governmental consents and to execute and deliver any filings with any governmental authority;

RESOLVED, that in connection with the transactions contemplated in the preceding resolutions, Thomas X. Fritsch be, and hereby is, authorized in the name and on behalf of the Company, to certify any more formal or detailed resolutions as such officer may deem necessary, desirable, advisable or appropriate to consummate, effectuate, carry out or further the intent and purposes of the foregoing resolutions; and that thereupon, such resolutions shall be deemed adopted as and for the resolutions of the board of directors as if set forth at length herein; and

RESOLVED, that the omission from these resolutions of any agreement or other arrangement contemplated by the foregoing resolutions or any action to be taken in accordance with the foregoing resolutions shall in no manner derogate from the authority of the Authorized Officers to take all actions necessary, desirable, advisable or appropriate to consummate, effectuate, carry out or further the intent and purposes of the foregoing resolutions.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the undersigned sole shareholder of the Company has executed this Action by Unanimous Written Consent as of the date first written above.

HAVEN TIME IHC LLC

By: Max Holmes.

Name: Max Holmes

Title: Manager

ATTEST, THIS IS A TRUE RESOLUTION OF THE SOLE SHAREHOLDER
OF TIME INSURANCE COMPANY

Thomas X. Fritsch
Thomas X. Fritsch
General Counsel of Time Insurance Company