

FILED
07-13-2022
CIRCUIT COURT
DANE COUNTY, WI
2020CV001054

STATE OF WISCONSIN : CIRCUIT COURT : DANE COUNTY

In the Matter of the Rehabilitation of:

Case No. 2020-CV-1054

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 TO TERMINATE REHABILITATION AND
FOR ORDER FOR LIQUIDATION OF TIME INSURANCE COMPANY**

TO: All Interested Parties

NOTICE

PLEASE TAKE NOTICE that the Petitioner, Nathan Houdek, Commissioner of Insurance of the State of Wisconsin (the “Commissioner”)¹, brings this Verified Petition to Terminate Rehabilitation and for Order for Liquidation (the “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 Petition and the proposed Order Terminating Rehabilitation and Order for Liquidation, 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., and on other parties who have appeared in this proceeding, by August 29, 2022. The Commissioner shall file and serve any responsive pleadings by no later than September 15, 2022.

¹ Commissioner Mark Afable resigned effective December 17, 2021, and Nathan Houdek now serves as the Commissioner of Insurance.

VERIFIED PETITION

Nathan Houdek, Commissioner of Insurance of the State of Wisconsin (the “Commissioner”), hereby petitions the Court, pursuant to Wis. Stat. §§ 645.35(1) and 645.41, to enter the proposed Order Terminating the Rehabilitation and for Liquidation of Time Insurance Company (“Time” or the “company”).

As grounds for this Petition, the Commissioner states as follows:

BACKGROUND²

1. He is the duly appointed and confirmed Commissioner of Insurance of the State of Wisconsin, and he makes this Petition as he is authorized to do, pursuant to Wis. Stat. §§ 645.35(1) and 645.41.

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. Since 2014, Time has been an insurer in run-off, with the vast majority of its policies reinsured on a 100% coinsurance basis with six financially strong and accredited reinsurers. These reinsurers or other third-party administrators have provided policy and claims administration for nearly all Time policies. A small number of policies directly insured by Time and not subject to reinsurance agreements also are administered by a third-party administrator.

² The May 18, 2020 Verified Petition for Order for Rehabilitation contains a more detailed Background section, which is incorporated herein by reference.

Time relies heavily on consultants and contractors for the operations of the company, outsourcing most company functions. This all greatly reduces the risk to policyholders and the public as policy and claims management experiences for policyholders have remained largely unaltered during these insolvency proceedings.

4. 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 with Haven Insurance Company II (the “Transaction”), with Time the survivor of the merger. Time did business and was licensed in Puerto Rico under the name “Time Insurance Company II.”

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

6. Following the approval of the redomestication and merger, Time began efforts to recapture its 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 Life Insurance Company (“Hancock”). On July 16, 2019, based on Time’s financial situation, 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.

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 was not in the best interest of Wisconsin insureds or the public.

8. As a result of continued objections from several states, Time did not complete the proposed reinsurance recapture transaction, and Time 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 reissued a 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 OCI confirmed the redomestication of Time to Wisconsin.

RETROCESSION TRANSACTION

10. The 2020 Stipulation and Order permitted Time, upon becoming a Wisconsin domestic insurer again, to potentially enter into a retrocession transaction (the “Retrocession Transaction”) relating to one of its existing reinsurance treaties, subject to the OCI’s final approval.

11. The Retrocession Transaction was intended to allow Time to seek to address Time’s solvency issues.

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

13. 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 (a Haven affiliate), and Haven Reinsurance would assume all obligations under the reinsurance agreement.

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 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. Among other concerns, contrary to the OCI’s preference, the proposed initial plan was for a novation of the reinsurance agreement to Haven Reinsurance, rather than a retrocession of the reinsured’s block of business.

16. Under the proposed 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 and surplus of Time and Haven Reinsurance. The OCI determined that, under the proposed transaction, there would be insufficient surplus available to support reserves such that an adverse development in the long-term care reserves would lead to Time’s insolvency. As such, the OCI 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 indicated it was unlikely that several of the states would rescind their cease and desist orders, and having a majority of states support the

transaction was a necessary precursor for the transaction to move forward. Hence, the proposal submitted March 12, 2020, failed to adequately address the OCI's concerns and failed to address Time's ongoing insolvency. With no retrocession transaction, Time's risk-based capital has been at a mandatory control level since at least February of 2020. Accordingly, the OCI determined that rehabilitation was necessary.

REHABILITATION PROCEEDING

17. The Commissioner petitioned this Court for an Order for Rehabilitation on May 18, 2020, with the consent of Time and Haven. Following notice to interested parties, the Court received no objections to the Petition. Accordingly, on July 29, 2020, the Court entered the Rehabilitation Order, placing Time into rehabilitation and appointing the Commissioner as Rehabilitator of Time.

18. On September 25, 2020, the Commissioner filed a proposed Rehabilitation Plan ("Plan"), with the consent of Time and Haven. The Court received no objections to the Plan and, accordingly, on October 15, 2020, the Court entered an Order Approving Rehabilitation Plan.

19. Pursuant to the Plan, the Commissioner examined Time's block of long-term care policies currently reinsured by Hancock to evaluate the feasibility of a retrocession, novation or other similar transaction and the necessary capital and surplus for Time to support this block of business. The Commissioner retained Oliver Wyman Actuarial Consulting, Inc. ("Oliver Wyman") to perform the actuarial analysis on the long-term care block. After Oliver Wyman completed its work, the Commissioner entered into discussions with Hancock and Haven about a possible transaction. The parties chose not to pursue any transaction at that time.

20. Also pursuant to the Plan, the Commissioner reached agreements whereby all of the reinsurers directly assumed the fully reinsured policies written by Time. Those transactions

were intended to improve Time's financial stability, simplify the rehabilitation proceedings and, if necessary, any liquidation proceedings, and protect policyholders.

a. On August 26, 2020, the Commissioner entered into an assumption agreement with National Health Insurance Company ("NHIC") for approximately 92,356 health and life insurance policies that had been fully reinsured on a 100% coinsurance basis and administered by NHIC. On September 3, 2020, the assumption agreement was submitted to the Court for approval and, with no objection filed, the Court entered an Order Approving Assumption on September 22, 2020.

b. On October 1, 2020, the Commissioner entered into an assumption agreement with Assurity Life Insurance Company ("ALIC") for approximately 12 disability policies that had been fully reinsured on a 100% coinsurance basis and administered by ALIC. On October 6, 2020, the assumption agreement was submitted to the Court for approval and, with no objection filed, the Court entered an Order Approving Assumption on October 21, 2020.

c. On December 28, 2020, the Commissioner entered into an assumption agreement with Loyal American Life Insurance Company ("LALIC") for approximately 55 Medicare Supplement policies that were fully reinsured on a 100% coinsurance basis and administered by LALIC or its affiliates. On January 5, 2021, the assumption agreement was submitted to the Court for approval and, with no objection filed, the Court entered an Order Approving Assumption on January 19, 2021.

d. On May 9, 2022, the Commissioner entered into an assumption agreement with Hancock for approximately 25,000 policies that were fully reinsured on a 100% coinsurance basis and administered by Hancock. On May 16, 2022, the assumption agreement was submitted to the Court for approval and, with no objection filed, the Court entered an Order Approving Assumption on May 31, 2022.

e. On June 14, 2022, the Commissioner entered into an assumption agreement with Talcott Resolution Life Insurance Company (“Talcott”) for approximately 45,000 policies that were fully reinsured on a 100% coinsurance basis and administered by Talcott or its affiliates or contractual partners. On June 15, 2022, the assumption agreement was submitted to the Court for approval and, with no objection filed, the Court entered an Order Approving Assumption on June 30, 2022.

21. Time’s financial position has continued to deteriorate during the rehabilitation proceedings. Time reported capital and surplus of negative (-) \$ 6.35 million as of December 31, 2021, compared to positive (+) \$3.5 million on December 31, 2019.

a. Assets. As of December 31, 2021, Time’s total admitted assets were \$8.7 million. Time had \$5.4 million in cash and investments, of which \$3.5 million was in statutory deposits required by the nature of Time’s certificates of authority with various jurisdictions. The only other large asset was \$2.7 million in premium tax recoverables for Guaranty Association assessments. This non-liquid asset only may be used to offset future premium taxes.

b. Liabilities. As of December 31, 2021, Time's total liabilities were \$15 million. Its claims and reserves for the small number of policies directly insured by Time and not subject to reinsurance were approximately \$1.1 million. Furthermore, Time has significant liabilities, including approximately \$6.8 million owed for Guaranty Association assessments, and approximately \$4 million of Unclaimed Property ("UCP").

22. Throughout the rehabilitation proceeding, the Commissioner also has had discussions with various entities concerning other possible transactions that potentially could remove Time's obligations and risks associated with the small number of policies directly insured by Time and not subject to reinsurance agreements. Despite the Commissioner's best efforts, those discussions have not resulted in a transaction.

GROUNDS FOR LIQUIDATION

23. The grounds for this liquidation are as follows:

- a. Time is insolvent [Wis. Stat. § 645.41(2)];
- b. The shareholder of Time has consented to this Petition [Wis. Stat. § 645.41(10)];
- 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. Time is in such condition that the further transaction of business would be hazardous, financially or otherwise, to its policyholders, its creditors, or the public. [Wis. Stat. § 645.41(4)].

24. The liquidation of Time will maximize the recovery, and be in the best interest, of policyholders and other creditors of Time.

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

THE LIQUIDATION PROCEEDING

26. The Commissioner will provide the following notices to interested parties, pursuant to Wis. Stat. § 645.47, within 14 days:

- a. The Commissioner will publish legal notice in newspapers likely to apprise the public of the liquidation Petition. A true and correct copy of that notice is appended to this Petition as Exhibit A.
- b. The Commissioner will provide notice of the liquidation Petition to all of Time's policyholders and claimants under Time's policies and to all Guaranty Associations. A true and correct copy of that notice is appended to this Petition as Exhibit B.
- c. The Commissioner will provide notice of the liquidation Petition to all of Time's other creditors. A true and correct copy of that notice is appended to this Petition as Exhibit C.

27. Upon the Court's issuance of an Order for Liquidation with a finding of insolvency, the currently in force policies directly insured by Time and not subject to reinsurance agreements will be continued, pursuant to Wis. Stat. § 645.43, and by applicable state Guaranty Associations in accordance with their respective state's laws; or they will be terminated in accordance with Wis. Stat. § 645.43, where there is no Guaranty Association coverage.

28. The Commissioner will establish a policyholder website on the Wisconsin Office of the Commissioner of Insurance webpage.

29. The Commissioner will submit regular updates to the Court regarding the status of the liquidation, Time's financial condition, and other relevant topics.

30. Based on this Petition, the Commissioner asks the Court for an Order for Liquidation of Time that provides as follows:

- a. Finds that the grounds for liquidation exist under Wis. Stat. § 645.41, and finds that Time is insolvent.
- b. Pursuant to Wis. Stat. § 645.35, terminates the Rehabilitation.
- c. Pursuant to Wis. Stat. § 645.42, appoints Commissioner Nathan Houdek and his successors in office or any of his delegees as the Liquidator of Time.
- d. Pursuant to Wis. Stat. § 645.46(1), appoints Mark Femal of Strohm Ballweg as the Special Deputy Liquidator to act for the Commissioner overseeing the liquidation process. Mr. Femal currently is serving as the Special Deputy Commissioner for purposes of overseeing the rehabilitation of Time. His background is more fully set forth in the Rehabilitation Petition.
- e. Pursuant to Wis. Stat. § 645.46(2), appoints Godfrey & Kahn, S.C. as outside legal counsel to the Commissioner as Liquidator of Time. Godfrey & Kahn currently is serving as outside legal counsel in the rehabilitation of Time.
- f. Pursuant to Wis. Stat. § 645.46(2), authorizes the Commissioner to engage the services of existing and additional professional consultants and experts, including incurring fees and expenses that are reasonable and necessary.
- g. Authorizes the Commissioner to retain Time employees and delegate specific authority to them, subject to the Commissioner's or Special Deputy Liquidator's express permission and continued oversight.
- h. Orders that the Commissioner, the Commissioner's employees (past and present), the Special Deputy Liquidator, Godfrey & Kahn, S.C., officers and

employees of Time (past and present) acting under the direction of the Liquidator, and any other professionals who the Commissioner employs or retains as independent contractors to assist in the liquidation process, and the other professional's employees (past and present) shall have official immunity and shall be immune from suit and liability, both personally and in their official capacities, for any claims for damage to or loss of property or personal injury or other civil liability caused by or resulting from any alleged act, error, or omission arising out of or by reason of their duties or employment with respect to the Time liquidation; provided that nothing in the Court's Order shall be construed to immunize the Commissioner or any other person or entity identified in this paragraph from suit or liability for any damage, loss, or injury caused by their intentional misconduct; further orders that if any legal action is commenced against any person or entity identified in this paragraph, whether against that person or entity personally or in an official capacity, alleging property damage, property loss, personal injury or other civil liability caused by or resulting from any alleged act, error, or omission arising out of or by reason of their duties or employment in connection with this liquidation, that person or entity shall be indemnified from the assets of Time for all expenses, attorney's fees, judgments, settlements, decrees, or amounts due, owing, or paid in satisfaction of or incurred in the defense of such legal action, unless it is determined upon a final adjudication on the merits that the alleged act, error, or omission did not arise out of or by reason of the person's or entity's duties or employment for the Time liquidation, or was caused by intentional misconduct.

- i. Orders that the Commissioner and the Special Deputy Liquidator have all powers and protections set forth in Wis. Stat. chapter 645 for the liquidator of a Wisconsin domestic insurance company.
- j. Sets a bar date for the filing of all claims with the Liquidator for six (6) months after the entry of the Order for Liquidation.
- k. Authorizes the Commissioner to coordinate and conduct business and administrative activities for Time and grants the Commissioner and the Special Deputy Liquidator the authority to operate Time with the full power authorized under Wis. Stat. chapter 645.
- l. Orders that the currently in force policies directly insured by Time and not subject to reinsurance agreements will be continued by applicable state Guaranty Associations in accordance with their respective state's laws; or such policies will be terminated in accordance with Wis. Stat. § 645.43, where there is no Guaranty Association coverage.
- m. Permanently enjoins and restrains all actions, claims, lawsuits, administrative or other proceedings against Time, the Commissioner as Liquidator of Time, his employees, the Special Deputy Liquidator, and all consultants and experts they retain for the liquidation, except as otherwise provided in the Order.
- n. Enjoins and restrains for 180 days after the entry of the Order for Liquidation all actions, claims, lawsuits, administrative or other proceedings in which Time is or is alleged to be obligated to defend a party pursuant to an insurance policy, bond, contract, or otherwise, or in which Time is named a party, pursuant to Wis. Stat. § 803.04(2).

- o. Permanently enjoins and restrains all persons and entities from obtaining preferences, judgments, attachments, or other liens or making any levy against Time's assets or any part thereof.
- p. Orders that any and all actions taken, or not taken, by the Commissioner in this liquidation shall not be construed to be, nor be considered, a preference under Wis. Stat. § 645.54, or as that term is generally used in receivership and bankruptcy law.
- q. Orders that the rights and liabilities of Time and its creditors, policyholders, shareholders, members, and all other persons interested in Time's estate are fixed, as of the date the Petition was filed, except as otherwise provided in this Order or in Wis. Stat. chapter 645.
- r. Orders such other terms, conditions, and relief as set forth in the proposed Order for Liquidation filed with this Petition, and such further terms, conditions, and relief as the Court may deem necessary.

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

Dated at Madison, Wisconsin, this 13th day of July, 2022.

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

Respectfully submitted,

GODFREY & KAHN, S.C.

By: Electronically signed by James A. Friedman
James A. Friedman
Zachary P. Bemis
Attorneys for Petitioner Nathan Houdek,
Commissioner of Insurance of the State of
Wisconsin

VERIFICATION

STATE OF WISCONSIN)
)
COUNTY OF DANE) ss.

NATHAN HOUDEK, being fully sworn on oath, deposes and states as follows:

- 1. I am the Commissioner of Insurance of the State of Wisconsin and verify the foregoing Petition to Terminate Rehabilitation and for Order for Liquidation ("Petition") on its behalf.
2. I have read the Petition and, to the best of my knowledge, information and belief, it is true and correct.

[Handwritten signature of Nathan Houdek]
Nathan Houdek

Subscribed and sworn to before me
This 13th day of July, 2022

[Handwritten signature of Lauren U. Van Buren]
Print Name: Lauren U. Van Buren
Notary Public, State of Wisconsin
My Commission: Permanent

