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CLERK OF THE SHAWNEE COUNTY DISTRICT COURT
CASE NUMBER: 2019-CV-000351



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

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.)	

ORDER OF REHABILITATION

Now on this date, Petitioner Vicki Schmidt, in her capacity as the Kansas Commissioner of Insurance (“Commissioner” or “Petitioner”), appears by counsel upon the *Petition for Rehabilitation of Domestic Insurer* (“Rehabilitation Petition”) pursuant to the Kansas Insurers Supervision, Rehabilitation and Liquidation Act, K.S.A. § 40-3605, *et seq.* (the “Act”).

Respondent also appears by counsel. On the evidence and consent presented, the Court finds:

1. The jurisdiction and venue of this proceeding are proper under K.S.A. § 40-3616.
2. Physicians Standard Insurance Company is a domestic stock insurance company organized under the laws of the State of Kansas.
3. Based on the Kansas Insurance Department’s investigation of Physicians Standard Insurance Company to date, the Commissioner has determined the company is in such condition that the further transaction of business would be hazardous financially to its policyholders, creditors, or the public.

4. The board of directors of Physicians Standard Insurance Company has consented to rehabilitation, which is a sufficient, independent ground upon which this Court may enter an order of rehabilitation under K.S.A. § 40-3616(i).

5. The Court finds that good cause exists to grant the Commissioner's Rehabilitation Petition. **IT IS THEREFORE ORDERED, ADJUDGED AND DECREED** as follows:

6. ***Appointment of the Rehabilitator.*** Petitioner Vicki Schmidt, in her capacity as Commissioner of Insurance, and her successors in office, is appointed rehabilitator of Physicians Standard Insurance Company (the "Rehabilitator"), with all the rights, duties, powers and obligations under law and under K.S.A. § 40-3605, *et seq.* The Rehabilitator may take such actions as she deems necessary or appropriate to reform, revitalize, and rehabilitate Physicians Standard Insurance Company. Neither the grant herein of specific authority to the Rehabilitator nor the imposition herein of specific duties upon the Rehabilitator shall be interpreted to diminish the authority conferred upon the Rehabilitator by those sections.

7. ***Possession of Property.*** The Rehabilitator shall forthwith take possession and title of Physicians Standard Insurance Company and all of its books, records, accounts and all other assets and property, wherever located and in whatever form, subject to the supervision of this Court.

8. ***Stay of Litigation and Other Proceedings Against PSIC.*** All actions or proceedings in this State, including any arbitration, in which Physicians Standard Insurance Company is a party or is defending a party, are stayed for at least ninety (90) days from the date of this Order and for such additional time as is necessary for the Rehabilitator to obtain proper representation and prepare for further proceedings.

9. The following actions are also stayed:

- a. Any act to obtain possession or property of PSIC or to exercise control over property of PSIC.
- b. Any act to create, perfect or enforce any lien against property of PSIC.
- c. 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 delinquency proceeding;
- d. Any act to collect, assess, or recover a claim against PSIC that arose before the commencement of this delinquency proceeding.
- e. Any setoff of any debt owing to PSIC that arose before the commencement of this delinquency proceeding.

10. The Rehabilitator shall immediately consider all litigation pending outside this state against Physicians Standard Insurance Company or against a party that Physicians Standard Insurance Company is defending, and shall petition the courts having jurisdiction over that litigation for stays whenever necessary to protect the estate of Physicians Standard Insurance Company.

11. **Reports to the Court.** The Rehabilitator shall make semi-annual accountings and report to the Court each year. The first accounting and report shall be due on or before the 120th day following the entry of this Order.

12. **Contracts.** Pursuant to K.S.A. § 40-3617(c), this Order shall not constitute an anticipatory breach of any contract of Physicians Standard Insurance Company, nor shall it be grounds for retroactive revocation or retroactive cancellation of any contracts of said company, unless such revocation or cancellation is made by the Rehabilitator pursuant to K.S.A. § 40-3618.

13. The Commissioner, as Rehabilitator may modify or cancel any contract or agreement that, in the Rehabilitator's sole discretion, is not in the best interests of Physicians Standard Insurance Company or its policyholders or other creditors.

14. **Immunity.** The Rehabilitator, her successors, special deputies, employees, agents and attorneys, and all employees of the State of Kansas, when acting with respect to the rehabilitation of Physicians Standard Insurance Company, shall enjoy official immunity and be immune from any claim against them personally while acting in good faith in the performance of their functions and duties in connection with the rehabilitation during the period of rehabilitation.

15. **Special Deputy and Other Assistance.** The Commissioner, as Rehabilitator, may appoint one or more special deputies who shall have all the powers and responsibilities of the Rehabilitator, and the Commissioner may employ such counsel, clerks, and assistants as deemed necessary.

16. The compensation of the special deputy, counsel, clerks and assistants, and all expenses of taking possession of Physicians Standard Insurance Company and of conducting the proceedings shall be fixed by the Commissioner with approval of the Court and shall be paid from the assets of Physicians Standard Insurance Company.

17. The Rehabilitator is authorized to immediately proceed to pay all outstanding debts as of the date of this Order that are owed by Physicians Standard Insurance Company to any professional entity that has been hired by either Physicians Standard Insurance Company or the Commissioner in connection with this matter. As a condition to the payment of such debts, the Rehabilitator shall obtain from such professional a written acknowledgement that the payment of the outstanding indebtedness is subject to final review and approval by this Court and that, in the event that the Court determines that the fees paid are not reasonable, the

professional shall be subject to an order of this Court requiring the disgorgement of any fees that were overpaid by the Rehabilitator. In determining the reasonableness of any fees paid this Court shall apply the normal and customary law that is applied in determining the reasonableness of a professional's fees. Within ninety (90) days following entry of this Order the Rehabilitator shall file with the Court an accounting of all fees paid to professionals as allowed by this paragraph and the Rehabilitator shall seek final approval of those fees. In the event the final approval is given by this Court then such fees shall no longer be subject to possible further disgorgement.

18. ***Management of the Company.*** The powers of the respective officers, managers, and directors of Physicians Standard Insurance Company are hereby suspended. The Rehabilitator shall have all the powers of the officers, managers, and directors of Physicians Standard Insurance Company.

19. The Rehabilitator shall have full power to direct and manage, to hire and discharge employees subject to any contract right they may have.

20. The Rehabilitator shall have full power to deal with the property and business of Physicians Standard Insurance Company.

21. ***Legal Action/Preservation of Assets.*** The Rehabilitator is authorized and directed to seek all other relief that the Rehabilitator deems necessary to preserve and protect the assets of Physicians Standard Insurance Company, wherever they may be located, and minimize, reduce, compromise or eliminate any existing or potential claims against Physicians Standard Insurance Company. This authority expressly includes, but is not limited, seeking a stay of any litigation pending against Physicians Standard Insurance Company in any Federal Court or in any state outside of Kansas and working with the Commissioners and/or Directors of the respective

Departments of Insurance in other states where Physicians Standard Insurance Company has on-going dealings including the institution of any legal proceedings ancillary to this matter.

22. The Rehabilitator shall have full power and authority under K.S.A. §§ 40-3629 and 40-3630 to avoid and recover fraudulent transfers. The Rehabilitator is hereby authorized to pursue any claims or other causes of action that any current or former creditors of Physicians Standard Insurance Company could assert against any other entity under the Kansas Uniform Fraudulent Transfer Act, K.S.A. § 330-201, *et. seq.*

23. The Rehabilitator shall further have all power to pursue all appropriate legal actions and remedies on behalf of Physicians Standard Insurance Company and its policyholders and creditors, subject to any specific limitations that may arise out of an order of this Court pursuant to the Memorandum of Understanding and related resolution by the Board of Directors of Physicians Standard Insurance Company following review and approval of that Memorandum of Understanding by this Court.

24. The Rehabilitator shall succeed to and control any and all legal privileges held by Physicians Standard Insurance Company.

25. ***Prohibitions Applicable to Former Affiliated Persons and Entities.*** Pursuant to K.S.A. § 40-3609, all entities and persons (as that term is defined by K.S.A. § 40-3607(m)), including, but not limited to, the officers, directors, agents, current and former contractors or vendors, and employees of Physicians Standard Insurance Company, are enjoined from:

- a. Transacting the business of Physicians Standard Insurance Company, other than as directed by the Rehabilitator, her successors or authorized representatives;
- b. Transferring property of Physicians Standard Insurance Company without the approval of the Rehabilitator, her successor or authorized representatives;

- c. Interfering with the Rehabilitator's actions authorized by this Order or by the Act or any proceeding of Physicians Standard Insurance Company under the Act;
- d. Wasting the assets of Physicians Standard Insurance Company;
- e. Dissipating and transferring bank accounts or any property or other assets of Physicians Standard Insurance Company;
- f. Withholding any books, accounts, documents or other records relating to the business of Physicians Standard Insurance Company from the Rehabilitator, her successors or her authorized representatives;
- g. Taking any action that might lessen the value of the assets of Physicians Standard Insurance Company;
- h. Instituting or further prosecuting any actions or proceedings on behalf of Physicians Standard Insurance Company without the permission of the Rehabilitator, her successors or authorized representatives;
- i. Obtaining preferences, judgments, attachments, garnishments or liens against Physicians Standard Insurance Company, its assets or its policyholders;
- j. Levying execution against Physicians Standard Insurance Company, its assets, or its policyholders;
- k. Making any sale or deed for nonpayment of taxes or assessments that would lessen the value of the assets of Physicians Standard Insurance Company;
- l. Threatening or contemplating any other action that might lessen the value of Physicians Standard Insurance Company's assets or that might prejudice the rights of its policyholders, creditors, or shareholders, or the administration of any proceeding involving Physicians Standard Insurance Company under the Act; and

- m. Paying any debts owed to Physicians Standard Insurance Company (including rental payments) to anyone other than the Rehabilitator, her successors or authorized representatives.

26. ***Cooperation with the Rehabilitator.*** Any current and former officer, manager, director, trustee, owner, employee, contractor, vendor, or agent of Physicians Standard Insurance Company, or any other entity or person (as that term is defined by K.S.A. § 40-3607(m)) with authority over or in charge of any segment of its affairs at any time, shall cooperate with the Rehabilitator.

27. All officers, managers, directors, owners, employees, attorneys (including outside counsel) or other agents or representatives of Physicians Standard Insurance Company, or any other persons with authority over or in charge of any segment of the affairs of Physicians Standard Insurance Company, including any person who exercises control directly or indirectly over activities of Physicians Standard Insurance Company or any other affiliate of Physicians Standard Insurance Company, shall and are hereby ordered to, cooperate with the Commissioner by:

- a. Promptly replying in writing to any inquiry from the Commissioner;
- b. Making available to the Commissioner any books, accounts, documents or other records or information or property of or pertaining to Physicians Standard Insurance Company and in Physicians Standard Insurance Company's possession, control or custody; and
- c. Not obstructing or interfering with the Commissioner in the conduct of any delinquency proceeding under the Act or any investigation preliminary or incidental thereto.

28. ***Scope of This Order.*** Nothing in this Order of Rehabilitation may be construed as a “final order of liquidation” or a legal finding that Physicians Standard Insurance Company is “impaired” or “insolvent” and, until further order or action by this Court, Physicians Standard Insurance Company shall not be considered “insolvent” within the meaning of the K.S.A. § 40-3607(k). However, nothing in this paragraph shall be deemed to prejudice the Commissioner in any way from demonstrating to the Court, based upon a preponderance of the evidence, the date upon which Physicians Standard Insurance Company became insolvent (which date the Court recognizes could predate the entry of this Order).

29. Nothing in this Order shall be deemed to limit or impede in any way any right or authority conferred upon the Commissioner by the Act or other applicable law.

30. This Order shall not be sealed or confidential. The Commissioner shall file this order with the Clerk of the Court so that creditors and the public are put on notice of the rehabilitation.

IT IS SO ORDERED.

**THIS ORDER IS EFFECTIVE ON THE DATE AND TIME SHOWN ON THE
ELECTRONIC FILE STAMP.**

Prepared by:

Dated: August 19, 2019

/s/Justin L. McFarland

Justin L. McFarland, KS#24247

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