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ATTORNEYS FOR PETITIONER

**IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
DIVISION 15**

| | | |
|----------------------------------|---|----------------------|
| VICKI SCHMIDT, |) | |
| COMMISSIONER OF |) | |
| INSURANCE, |) | |
| <i>In her Official Capacity,</i> |) | |
| |) | |
| Petitioner, |) | Case No. 2025 CV 151 |
| |) | |
| vs. |) | |
| |) | |
| KEY INSURANCE COMPANY, |) | |
| |) | |
| Respondent. |) | |

**PETITION FOR LIQUIDATION ORDER AND JUDGMENT
OF LIQUIDATION OF KEY INSURANCE COMPANY
WITH A FINDING OF INSOLVENCY**

Vicki Schmidt, the Kansas Commissioner of Insurance, in her capacity as the rehabilitator (“Rehabilitator”) of Key Insurance Company (“Key”), petitions the Court for a final order and judgment of liquidation with finding of insolvency of Key pursuant to the Kansas Insurers Supervision, Rehabilitation, and Liquidation Act (the “Act”). This Petition is brought pursuant to K.S.A. 40-3620 and 40-3621 because Key is insolvent, and the Commissioner believes further attempts to rehabilitate the insurer would be futile and would increase the risk of loss to creditors, policyholders or the public.

In support of this Petition, the Commissioner states as follows:

Jurisdiction, Venue, and Standing

1. Petitioner is the duly-elected Commissioner of Insurance of the State of Kansas (“Commissioner”) and is the chief executive of the Kansas Department of Insurance (“Department”) pursuant to K.S.A. 40-102. Pursuant to the Court’s Order of Rehabilitation entered in this action on March 3, 2025, the Commissioner is the Court-appointed Rehabilitator of Key.

2. Respondent Key is a stock property and casualty insurance company organized under the laws of the State of Kansas. Key is licensed to conduct an insurance business in the states of Kansas, Alabama, Arizona, Missouri, Nevada, and Oklahoma.

3. Key’s statutory and administrative home office is located at 8595 College Blvd, Suite 200, Overland Park, Kansas.

4. The Commissioner is responsible for the supervision, control and regulation of companies authorized to transact the business of insurance in Kansas pursuant to K.S.A. 40-103,

and is the only person authorized to bring this action pursuant to K.S.A. 40-3608, 40-3620, and 40-3621.

5. Jurisdiction and venue are proper in this Court pursuant to K.S.A. 40-3608(e), and 40-3621.

Factual Allegations

6. The Rehabilitator hereby incorporates by reference the factual allegations in her Rehabilitation Petition as if fully set forth herein.

7. On March 3, 2025, the Commissioner filed a *Petition for Rehabilitation of Domestic Property and Casualty Company* (“Rehabilitation Petition”) wherein the Commissioner sought an order of the court to rehabilitate Key under the Kansas Insurers Supervision, Rehabilitation, and Liquidation Act, K.S.A. 40-3605, *et seq.* The Commissioner showed the Court that the further transaction of business would be hazardous to its policyholders, creditors, or the public, and further that the Board of Directors of Key consented to rehabilitation.

8. On March 3, 2025, the Court entered an *Order of Rehabilitation*, wherein the Commissioner was appointed as Rehabilitator. The Rehabilitator promptly filed three motions for and obtained orders appointing two Special Deputy Receivers, Jodi M. Adolf and Bruce E. Baty, (collectively “SDR”), approving a consulting agreement with Heese Consulting, LLC (“Consultant”), and approving a technology consulting agreement with Inspired Technologies (“Inspired”).

9. Pursuant to K.S.A. 40-3617 and the Order of Rehabilitation, all assets of Key were vested in the Rehabilitator.

10. Beginning the afternoon of March 3, 2025, the SDR assumed control of the company and secured Key's assets, and moved promptly to (a) notify agents and policyholders that Key would not issue new policies, or renew existing policies, after March 3, 2025; (b) notify all interested parties that the Court had imposed a moratorium on the payment of any claim in excess of policy limits; (c) instructed all lawyers representing Key or Key's policyholders to move to stay all lawsuits for at least ninety (90) days; and (d) reduce operational expenses.

11. Additionally, SDR, Consultant, and members of the Commissioner's staff began to evaluate the current financial condition of Key and its prospects for continuing to fund claim payments and meet its other lawful obligations in the rehabilitation proceedings. That evaluation revealed the following:

- a. Key had retained the actuarial firm Streff Insurance Services ("Streff") to conduct an actuarial analysis of the insurer's claim exposure for purposes of Key's 2024 annual statement, which the company filed with the Commissioner on March 4, 2025. Streff's report estimated a low, central, and high range of net reserve liability (loss and loss adjustment expenses) estimates as of December 31, 2024 of \$58,601,000, \$65,112,000, and \$71,623,000, respectively. Note that in the 2023 annual statement filing, Key reported net reserve liabilities of \$33,956,000.
- b. Utilizing any of Streff's low, central, or high net reserve liabilities estimates produces a negative surplus number for Key at year-end 2024, to-wit: (\$7,359,825) using the low range estimate, (\$13,871,000) using the central range estimate, and (\$20,373,000) using the high range estimate.

12. The SDR and Consultant also estimate by the end of March, 2025, Key will have depleted all of its available cash and cash equivalents paying claims, loss adjustment expenses, agents' commissions, and unallocated expenses. When the cash resources have been exhausted, Key will have to begin liquidating its investments to generate additional cash in order to satisfy its obligations. Since there is negative spread between book-to-market value in Key's investment portfolio of approximately \$2,500,000, a wholesale liquidation of Key's investments prior to maturity will only exacerbate Key's financial position. Further details of the financial analysis are contained in the Declaration of Frederick G. Heese, which is incorporated herein and attached hereto as Exhibit A.

13. Under Kansas law, an insurer is insolvent if the insurer 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) any capital and surplus required by law for its organization, or (b) the total par value of its authorized and issued capital stock. K.S.A. 40-3607(k).

14. In its 2024 year-end annual financial statement filed by the company with the Commissioner on March 4, 2025, Key reported total liabilities of \$65,286,002 (utilizing Streff's low estimate of reserve liabilities) and admitted assets of only \$57,926,177.

15. Key is insolvent in that its liabilities exceed its admitted assets and is in such condition that the further transaction of business would be hazardous, financially or otherwise, to its policyholders, its creditors or the public.

Liquidation of Insurer

16. The Commissioner incorporates by reference each of the foregoing allegations as if fully set forth herein.

17. K.S.A. 40-3621 provides that the Commissioner may petition this Court to liquidate an insurer “on the basis: (a) of any grounds for an order of rehabilitation as specified in K.S.A. 40-3616...; (b) that the insurer is insolvent; or (c) that 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.”

18. The Commissioner believes that each of those grounds exist in this situation and necessitate the liquidation of Key.

19. K.S.A. 40-3616 sets forth the grounds for the Commissioner to seek an order to rehabilitate an insurer domiciled in Kansas, which include that the insurer is in such condition that the further transaction of business would be hazardous to its policyholders, creditors, or the public and if the directors of the insurer requests or consents to rehabilitation under the Act.

20. Key’s consistent underwriting losses, existing claims, negative policyholders’ surplus, and need to liquidate investments to meet operating needs demonstrate a substantially deteriorating financial position equating to insolvency, increasing risk to policyholders, creditors and the public.

21. The foregoing demonstrates that the further transaction of business by Key would be hazardous, financially or otherwise, to Key’s policyholders, its creditors and its public. Indeed, the Rehabilitator believes that liquidation of Key is the only viable course of action to take going forward.

Relief Requested

WHEREFORE, pursuant to K.S.A. 40-3605, *et seq.*, Petitioner requests the Court enter an Order and Judgment of Liquidation with Finding of Insolvency against Key as follows:

1. Finding that sufficient cause exists for the liquidation of Key pursuant to K.S.A. 40-3621 because:
 - a. Grounds continue to exist for rehabilitation of Key specified in K.S.A. 40-3616;
 - b. Key is insolvent; and
 - c. The further transaction of business by Key would be hazardous financially to its policyholders, creditors or to the public;
2. Appointing Vicki Schmidt, Commissioner of Insurance for the State of Kansas and her successors, as Liquidator;
3. Approving the Liquidator's appointment of Jodi M. Adolf and Bruce E. Baty as her Special Deputy Receivers, pursuant to K.S.A. 40-3625(a)(1), who shall have all the powers and responsibilities of the Liquidator granted under Kansas law and this Order;
4. Directing that the Liquidator may consult with and obtain the assistance and advice of insurance experts, attorneys, and consultants and approve her appointment of Heese Consulting and Inspired Technologies, pursuant to K.S.A. 40-3625(a)(2), to assist with the liquidation of Key.
5. Approving the continuation of Petitioner's agreements with the SDRs, Heese Consulting and Inspired Technologies at the rates set forth in the SDR Contract, Consulting Contract and Technology Contract, which were previously approved by this Court on March 3, 2025;
6. Directing that the compensation of the SDR, counsel, consultants, clerks and assistants and all expenses of taking possession of Key and conducting the proceedings shall be

fixed by the Liquidator, with the approval of the Court, and shall be paid out of the funds or assets of Key;

7. Directing the SDR to administer the liquidation of Key, subject to the general supervision of the Liquidator and the specific supervision of this Court, at the pleasure of the Liquidator and the Court, with all powers of the Liquidator, except as those powers may be limited from time to time by the Liquidator. K.S.A. § 46-3618(a);

8. Authorizing the Liquidator to take all actions permitted under the Kansas Insurers Supervision, Rehabilitation, and Liquidation Act;

9. Directing the Liquidator forthwith to take possession of assets of Key and to administer such assets under the general supervision of this Court;

10. Vesting the Liquidator 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 Key ordered liquidated, wherever located, as of the entry of the final order of liquidation;

11. Directing that the rights and liabilities of Key and of its creditors, policyholders, shareholders, members and all other persons interested in Key's estate shall become fixed as of the date of entry of the order of liquidation, except as provided in K.S.A. 40-3623 and 40-3638;

12. Directing that the Liquidator shall have all the powers of the officers, directors, managers, agents and employees, whose authority shall be suspended, except as they are specifically re-delegated by the Liquidator;

13. Providing that the Liquidator shall have full power to direct and manage, to hire and discharge employees subject to any contract rights they may have, and to deal with the property and business of Key;

14. Directing that the Liquidator shall secure and take possession of all the assets, property, books, records, accounts and other documents of Key;

15. Prohibiting all officers, directors, managers, employees, or agents from disposing, using, transferring, removing or concealing any property of Key, without the express written authority of the Liquidator;

16. Prohibiting 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 Key, except under the express authorization of the Liquidator or by the further order of this Court;

17. Providing 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;

18. Providing that the Liquidator shall have no obligation to defend claims or to continue to defend claims subsequent to the entry of a Liquidation Order;

19. Establishing the accounting/report intervals as required by K.S.A. 40-3622(d);

20. Providing that the Liquidator shall be authorized and empowered to take whatever additional actions are deemed necessary to accomplish the full and complete liquidation of Key;

21. Determining that the order of liquidation is final and immediately subject to appeal, and grant such further decrees, orders and judgments under and within the provisions of K.S.A. 40-3605, et seq., as the Court shall find advisable or necessary; and

22. Such further decrees, orders and judgments under and within the provisions of K.S.A. 40-3605, *et seq.*, as the Court shall find advisable or necessary.

Respectively submitted,

/s/ Steven A. Karrer
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ATTORNEYS FOR PETITIONER
Vicki Schmidt, Commissioner of Insurance

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served a true and correct copy of the above and foregoing **Petition for Liquidation** on this 18th day of March 2025 by causing the same to be placed in the United States Mail, first class postage prepaid, electronic mail (when available), and/or hand-delivered addressed to the following:

Zach Dyer

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zdyer@polsinelli.com
Counsel for Respondent Key

Med James III

Chair, Board of Directors of Respondent Key
8595 College Blvd, Suite 200
Overland Park, Kansas 66210

Key Insurance Company

8595 College Blvd, Suite 200
Overland Park, Kansas 66210

/s/ Philip R. Michael
Philip R. Michael, KS #26072

2. **Assessment:**

Key is a domestic stock property and casualty insurance company organized under the laws of the State of Kansas. Key was incorporated on March 22, 2007. Key is currently licensed in 6 states – Alabama, Arizona, Kansas, Missouri, Nevada, Oklahoma – and issued private passenger auto liability/medical, and auto physical damage policies in Kansas, Nevada and Oklahoma. Key previously issued auto policies in Alabama and Arizona.

Key is wholly-owned directly by Med James, Inc. (“**MJI**”) with offices located in Overland Park, Kansas, and ultimately owned by Med James, III, a private individual. Pursuant to a Management Services Agreement, MJI staff provide the accounting functions for Key.

On March 3, 2025, based on the Kansas Department of Insurance’s (the “**Department**”) investigation of Key, the Commissioner determined the company to be in such condition that further transaction of business would be hazardous financially to its policyholders, creditors and the public, and petitioned the Shawnee County District Court for an order authorizing the Commissioner to place Key into Rehabilitation. The board of directors of Key consented to the rehabilitation, which was sufficient grounds upon which the order of rehabilitation was granted under K.S.A. section 40-3616(i). After the Court entered its Order of Rehabilitation on March 3, 2025, I have spent approximately 50 hours on evaluation of Key’s current financial condition and its prospects for continuing to fund claim payments and meet its other lawful obligations in the rehabilitation proceedings. My evaluation has included a review of the financial statements prepared by MJI’s accounting staff.

When reviewing the financial condition of an insurance entity such as Key, the factors that show whether the entity is solvent or whether the conduct of future business would be hazardous financially to its policyholders, creditors and the public, include the policyholder surplus, Risk

Based Capital (“RBC”), cash flow, and profitability. Each of these factors trend negative for Key and support a finding of insolvency.

A simple definition of an insurance company’s policyholder surplus is the difference between an insurer’s admitted assets and its liabilities. A negative policyholder surplus indicates insolvency, which is defined in KSA 40-3607(k) as the inability of an insurance company to pay its obligations when they are due, or when its admitted assets do not exceed its liabilities plus the greater of (A) any capital and surplus required by law for its organization¹; or (B) the total par of stated value of its authorized and issued capital stock².

My evaluation revealed the following:

- a. Key retained the actuarial firm Streff Insurance Services (“Streff”) to conduct an independent actuarial analysis of the insurer’s claim exposure for purposes of Key’s 2024 annual statement, which the company filed with the Commissioner on March 4, 2025. Streff’s report estimated a low, central, and high range of net reserve liability (loss and loss adjustment expenses) estimates as of December 31, 2024 of \$58,601,000, \$65,112,000, and \$71,623,000, respectively. Note that in the 2023 annual statement filing, Key reported net reserve liabilities of only \$36,556,000.
- b. Utilizing any of Streff’s low, central, or high net reserve liabilities estimates produces a negative surplus number for Key at year-end 2024, to-wit: (\$7,359,825) using the low range estimate, (\$13,871,000) using the central range estimate, and (\$20,373,000) using the high range estimate.

In its 2024 year-end annual financial statement filed by the company with the Commissioner on March 4, 2025, Key reported total liabilities of \$65,286,002 (utilizing Streff’s

¹ Key is required to have a minimum \$1,500,000 in capital and surplus to operate as an insurer in Kansas.

² Key’s total par value of stated value of its authorized and issued capital stock is \$2,500,000.

low estimate of reserve liabilities) and admitted assets of only \$57,926,177. With a negative policyholder surplus of almost \$7,400,000, Key is insolvent according to the definition of insolvency under KSA 40-3607(k).

In addition to calculating Key's surplus and solvency, I analyzed Key's available cash and cash equivalents to determine its liquidity. Based on that analysis, I estimate that by the end of March, 2025, Key will have depleted all of its available cash and cash equivalents paying claims, loss adjustment expenses, agents' commissions, and unallocated expenses. When the cash resources have been exhausted, Key will have to begin liquidating its investments to generate additional cash in order to satisfy its obligations. Since there is a negative spread of approximately \$2,500,000 between book and market value in Key's investment portfolio, a wholesale liquidation of Key's investments prior to maturity will only exacerbate Key's financial position, whereby the company would have to realize approximately \$2,000,000 in investment losses, which would reduce the company's surplus by such amount.

The principal conditions and events identified as being detrimental to Key are that the company has experienced significant claims and cash flow/liquidity issues, for which it was not prepared. Key experienced drastically increased claim reserves and claim payouts, as substantiated by their consulting actuary, that had not been adequately included in their balance sheet and statement of income. Due to the increased claim reserves and payouts, the company's loss and loss expense reserve liabilities drastically increased in 2024 by over \$22 million to \$53,972,000 and \$4,638,000, respectively. Likewise, the company's 2024 statement of income shows significant losses and loss adjustment expenses incurred, causing a net loss of \$16,302,99, which resulted in the company's surplus becoming a negative \$7,359,825. Also, due to the additional payouts, the company appears unable to meet its ongoing claim and operating expenses

with current liquid assets. The company had been supplementing the funds needed for such expenses with incoming premium. However, with no future premium, along with a need for additional capital, the company will be unable to meet its obligations without liquidating long-term assets. Absent an immediate infusion of millions of dollars of additional capital, the company will not be able to meet its obligations going forward due to its insolvency.

3. Conclusion:

Key is insolvent in that its liabilities exceed its admitted assets (plus the total par value of its capital stock) and is in such condition that the further transaction of business would be hazardous, financially or otherwise, to its policyholders, its creditors or the public. Due to the above detailed deterioration in the company's financial condition including negative policyholders' surplus, low RBC, unprofitability, and no clear path to alleviating such conditions, it is my assessment that Key is insolvent and the best course of action is to quickly place the company into court-ordered liquidation.

Pursuant to K.S.A. § 53-601, I declare under penalty of perjury under the laws of the state of Kansas that the foregoing is true and correct to the best of my knowledge, information and belief.

Dated: March 17, 2025


Frederick G. Heese