

**FAX TRANSMISSION SHEET**

**DATE:** \_November 29, 2023

**TO:** Clerk of the District Court, Shawnee County

Fax Number: (785) 251-4908

Case Number: 2019 CV 351

Case Caption: Vicki Schmidt, Commissioner of Insurance v. Physicians  
Standard Insurance Company

**FROM:** Kirsten A. Byrd

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Document Name

No. of Pages

Liquidator's Eighth Status Report

10 (including Fax cover)

**IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS  
DIVISION 6**

VICKI SCHMIDT,	)	
COMMISSIONER OF	)	<b>BY FAX</b>
INSURANCE,	)	
<i>In her Official Capacity,</i>	)	
	)	
Petitioner,	)	
	)	Case No. 2019 CV 351
vs.	)	
	)	
PHYSICIANS STANDARD INSURANCE	)	
COMPANY,	)	
	)	
Respondent.	)	

**LIQUIDATOR’S EIGHTH STATUS REPORT**

Vicki Schmidt, in her capacity as the court-appointed liquidator (“Liquidator”) of Physicians Standard Insurance Company (“PSIC”), provides the following status report relating to PSIC, pursuant to the Court’s Order of Liquidation (“Liquidation Order”), the Court’s Order on Liquidator’s Motion to Establish Certain Procedures, Extend Certain Deadlines, and to Approve Fees and Expenses in Relation to PSIC (“Procedural Order”), and K.S.A. 40-3622(d).

**I. Introduction**

This Court entered the Liquidation Order effective December 1, 2019 (“Liquidation Date”). Subsequently, on May 22, 2020, the Court issued its Procedural Order, which set regular reporting deadlines of every 6 months beginning June 1, 2020. This status report focuses on developments that occurred since the Liquidator filed her last report on June 1, 2023.

## II. Update on Policyholder and Other Creditor Claims-Related Activities

As previously reported, the Liquidator received a total of 137<sup>1</sup> proofs of claim (“POCs”). Since the last report, the Liquidator has denied or resolved policyholder claims totaling \$4,574,902.

One of the claims resolved since the last report involved a settlement reached by the Liquidator with Timothy H. Trout which resolved Mr. Trout’s POC filed in this liquidation,<sup>2</sup> and the Liquidator’s claims against Mr. Trout and Mr. Trout’s Counterclaims in a lawsuit pending in the federal district court against Mr. Trout and other defendants.<sup>3</sup> The Liquidation court approved the settlement on September 26, 2023.

There are additional pending claim denials totaling \$1,444,000, which are reflected in Exhibit A as class 2 policyholder claims. Under K.S.A. 40-3639, policyholders may object to a denial and, if the Liquidator does not alter the denial as a result of the objection, the Liquidator is to ask the Court for a hearing on the matter. Because the deadline for objecting to the Liquidator’s denials had not passed as of the date of this report, these denied claims are included in the amount of “Class 2 Claims filed with Liquidator.”

There are two contingent POCs which involve medical malpractice claims against PSIC insureds which are being handled by the Missouri Property & Casualty Insurance Guaranty Association (“MIGA”). These claims cannot be reviewed for denial or approval until the related lawsuits are resolved. Both matters are expected to conclude in 2024, after which the Liquidator will determine whether those liquidated claim will be accepted or denied.

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<sup>1</sup> Some proofs of claim contained more than one claim or more than one class of claim.

<sup>2</sup> Mr. Trout’s proof of claim was for \$1,250,000.00 for amounts he claimed were owed to him by PSIC for future payments under a non-compete agreement between Mr. Trout and MPM-PPIA. The Liquidator filed a claim against Mr. Trout in the litigation described in Section III herein, seeking reimbursement for \$562,500.00 in non-compete payments PSIC made to Mr. Trout when MPM-PPIA was no longer able to make those payments.

<sup>3</sup> See description of litigation in Section III, herein.

The Liquidator continues to review and adjudicate the validity of 35 remaining policyholder claims totaling \$1,248,284, all of which request refunds for premiums paid for extended reporting (“tail”) policies or for reimbursement for the cost of replacement tail policies.

The Liquidator will submit a report and recommendation for allowance of claims pursuant to K.S.A. 40-3642 once litigation matters being handled by MIGA are resolved and the Liquidator’s review of all claims is complete.

### **III. MPM-PPIA Receivership/Fraudulent Transfer Action and the Federal Lawsuit**

PSIC was previously majority-owned by a medical malpractice insurer based in Missouri, MPM-PPIA. On December 31, 2018, MPM-PPIA filed an action for voluntary commercial receivership in Franklin County, MO, *In re: Missouri Professionals Mutual-Physicians Professional Association*, Case No. 18AB-CC00267, with Daniel E. Leslie appointed as Receiver. The Receiver for MPM-PPIA asserted a fraudulent transfer action against PSIC in relation to a security interest granted to PSIC in MPM-PPIA’s building shortly before MPM-PPIA filed for voluntary receivership. That action is styled *In re: Missouri Professionals Mutual-Physicians Professional Association v. Physicians Standard Insurance Company*, Case No. 19AB-CC00177. MPM-PPIA’s action against PSIC seeks to recover \$750,000 held in a bank account related to that action. There has not been a resolution of this matter; however, the Liquidator and her counsel continue to work on potential resolution of all matters regarding MPM-PPIA.

The Receiver for MPM-PPIA also submitted a POC against the PSIC Estate in the amount of \$3,019,017.<sup>4</sup> As reported in the Liquidator’s prior status report, after sustained but unsuccessful efforts by the Liquidator to reach a settlement with the Receiver, the Liquidator issued a Notice of

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<sup>4</sup> This was classified as a Class 5 general creditor claim.

Denial of Claim to MPM-PPIA and on March 31, 2023, MPM-PPIA withdrew its POC in the PSIC liquidation.

As previously reported, on July 2, 2020, the Liquidator filed a petition in this Court, case number 2020-CV-364, against several former PSIC-related entities, including MPM-PPIA, Jonathan L. Downard (“Downard”), Hansen, Stierberger, Downard, Schroeder & Head LLC (“HSDSH”), Corporate Insurance Services (“CIS”), James Randy Snodgrass, J. Randy Snodgrass P.C. (“Snodgrass Defendants”), Mr. Trout, and The Baltic & Mediterranean Company, LLC (“B&M”). On August 25, 2020, Defendants Downard, HSDSH, CIS, and B&M, with consent of the other defendants, removed the case to the United States District Court for the District of Kansas. Because several of the Defendants had also filed claims in the liquidation which involved the same transactions that were the subject of the Liquidators’ claims, the Liquidator sought remand to the state court. On June 21, 2021, the federal court denied the Motion for Remand, but stayed the federal proceeding pending developments in the liquidation case.

Also as previously reported, the Liquidator sent denials of the POCs filed by Defendants J. Randy Snodgrass, CPA, P.C.; Corporation Insurance Services LLC; and The Baltic & Mediterranean Company LLC. None of the Defendants filed an objection to the denial of the respective POCs and the time for making such an objection, i.e., within 60 days from the mailing of the notice of denial, has expired. K.S.A. 40-3639(a). With the withdrawal of MPM-PPIA’s POC and approval of the Trout settlement by the Liquidation Court, the Liquidator believes there are no other claims against the PSIC estate which are implicated in her civil claims against Mr. Downard and others in the Federal Lawsuit. Accordingly, the Liquidator intends to file a separate motion with the federal court to ask that stay of the federal proceedings against Mr. Downard and others be lifted.

#### **IV. Update on Claims Handled by MIGA**

As discussed above, there are two remaining POCs which involve medical malpractice claims against PSIC insureds<sup>5</sup> which are being handled by MIGA. The forty-four other insured loss claims which were handled by MIGA on behalf of PSIC have been settled or dismissed. MIGA continues to provide the Liquidator with quarterly financial reports on the amounts it has incurred in administrative expenses and loss claim costs, including defense costs, which are shown in Exhibit A.

#### **V. Online Information Regarding the Liquidation Matter**

The Liquidator maintains information on the Kansas Department of Insurance website to provide historical and ongoing information about the PSIC Liquidation for access by the public and claimants. Information includes links to court orders, various notifications to policyholders since 2019, the POC form and related filing information, a frequently asked questions (“FAQ”) document, which is updated from time to time, and filings by the Liquidator with the court.

Online information regarding PSIC can be found at the Department’s website at: <https://insurance.kansas.gov/legal-issues/#psic>. The Liquidator also maintains a dedicated email address for PSIC-related matters which is monitored daily: [kid.psic@ks.gov](mailto:kid.psic@ks.gov).

#### **VI. Accounting and Other Items**

PSIC’s Statement of Net Assets and Net Liabilities (Unaudited) as of September 30, 2023, is attached to this status report as Exhibit A. The Liquidator will continue to amend or supplement that asset list pursuant to K.S.A. 40-3628(a) or at the Court’s request.

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<sup>5</sup> These included claims by third parties, such as patients against PSIC-insured medical providers filed either (1) before the date of the Liquidation Order, or (2) after the date of the Liquidation Order but which PSIC had notice of prior to the date of liquidation.



**CERTIFICATE OF SERVICE**

The undersigned certifies a true and correct copy of the above and foregoing was served by email on November 29, 2023, by causing the same to be sent by electronic mail addressed to all counsel of record, including the following, and by filing the same pursuant to Rule 119 via facsimile to the Court:

Shelley Forrest  
Missouri Department of Insurance  
[Shelley.Forrest@insurance.mo.gov](mailto:Shelley.Forrest@insurance.mo.gov)

Tamara Kopp  
The Missouri Insurance Guaranty Association  
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*/s/ Kirsten A. Byrd*  
\_\_\_\_\_  
Attorney for Petitioner

# **EXHIBIT A**

Physicians Standard Insurance Company  
Statement of Net Assets and Net Liabilities (Unaudited)  
As of September 30, 2023

<u>Assets</u>	<u>9.30.2023</u>
Cash Assets - Checking/Savings	\$ 205,257
Short and Long Term Investments	\$ 4,479,553
Accounts Receivable	\$ 87,000
Fixed Assets <sup>1</sup>	\$ 9,000
<b>Total Assets</b>	<b>\$ 4,780,810</b>
<u>Liabilities</u>	
<u>Class 1 Administrative Claims</u>	
Liquidator Administrative Expenses Accounts Payable	\$ 21,238
MIGA Administrative Expenses Incurred	\$ 1,006,343
MIGA anticipated future administrative expenses <sup>2</sup>	\$ 279,497
Liquidator Anticipated Future Legal-Related Expenses <sup>3</sup>	\$ 949,285
Liquidator Anticipated Future Miscellaneous Expenses <sup>4</sup>	\$ 180,150
<b>Total Class 1 Expenses</b>	<b>\$ 2,436,514</b>
<b>Assets less Class 1 Administrative Expenses</b>	<b>\$ 2,344,296</b>
<u>Class 2 Policyholder Claims</u>	
MIGA Claims Paid to date <sup>5</sup>	\$ 4,863,690
Reserve for MIGA Anticipated Future Claim Payments and defense costs	\$ 198,744
KIGA <sup>6</sup> Unearned Premium Refunded	\$ 2,130
Class 2 Claims filed with Liquidator <sup>7</sup>	\$ 3,692,284
<b>Total Class 2 Claims</b>	<b>\$ 8,756,848</b>
<b>Proofs of Claims Classes 3 to 9<sup>8</sup></b>	<b>\$ 733,200</b>
<b>Total Liabilities (All classes)</b>	<b>\$ 11,926,562</b>
<b>Total Net Liabilities (Assets minus liabilities)</b>	<b>\$ (7,145,753)</b>

1. Estimated value of data processing equipment.
2. Estimates provided by staff of the Missouri Insurance Guaranty Association ("MIGA") to finalize PSIC MIGA-covered claims through 12/31/2027.
3. These include fees for litigation-related matters, including outside counsel fees, forensic financial analysis, expert witness fees and court reporting fees.
4. Includes anticipated administrative costs such as accounting, bank service fees, and computer software and storage fees through 12/31/27.
5. Includes reimbursement of unearned premium of \$299,715, Claim payments of \$3,029,575.54 and Defense and Containment Expenses of \$1,534,339.82, as shown in the MIGA D Report.
6. Kansas Insurance Guaranty Association
7. These include 35 claims relating to tail policies (totaling \$1,248,284); two claims relating to litigation being handled by MIGA (totaling \$1,000,000); and policyholder claims (totaling \$1,444,000) which have been denied but the date to file objections is after December 1, 2023. This does not include claims denied by the Liquidator which denials were not objected to by the claimant.
8. Includes four claims, consisting of one general creditor claim, two late-filed claims and one shareholder claim.