

**IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS  
DIVISION 2**

VICKI SCHMIDT, )  
COMMISSIONER OF )  
INSURANCE, )  
*In her Official Capacity,* )  
 )  
Petitioner, ) Case No. 2019 CV 351  
 )  
vs. )  
 )  
PHYSICIANS STANDARD INSURANCE )  
COMPANY, )  
 )  
Respondent. )

**PETITION FOR FINAL ORDER AND JUDGMENT OF LIQUIDATION OF  
PHYSICIANS STANDARD INSURANCE COMPANY**

Vicki Schmidt, the Kansas Commissioner of Insurance (“Commissioner”), in her capacity as the rehabilitator (“Rehabilitator”) of Physicians Standard Insurance Company (“PSIC”), petitions the Court for a final order and judgment of liquidation of PSIC pursuant to the Kansas Insurers Supervision, Rehabilitation, and Liquidation Act (the “Act”). In support of this Petition, the Rehabilitator 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 Insurance Department (“Department”) pursuant to K.S.A. 40-102. Pursuant to the Court’s Order of Rehabilitation entered in this action on August 20, 2019, the Commissioner is the Court-appointed Rehabilitator of PSIC.

2. Respondent PSIC is a Kansas-domiciled stock insurance company. PSIC is licensed by the states of Kansas and Missouri to offer certain insurance products in those states.

PSIC is a medical malpractice liability insurance in Missouri and Kansas. PSIC's statutory home office is located at 2101 SW 21st Street, Topeka, KS 66604, and its main administrative office was located in Union, Missouri.

3. 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 authorized to bring this action pursuant to K.S.A. 40-3608 and 40-3621.

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

### **Factual Allegations**

5. On May 13, 2019, the Commissioner filed a *Petition for Rehabilitation of Domestic Insurer* ("Rehabilitation Petition") wherein the Commissioner sought an order of the court to rehabilitate PSIC under the Kansas Insurers Supervision, Rehabilitation, and Liquidation Act, K.S.A. 40-3605, *et seq.*

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

7. On July 9, 2019, Taylor & Mulder ("T&M"), an independent actuarial firm retained by the Department and consented to by PSIC for purposes of examining the financial condition of PSIC, issued a report. T&M concluded that PSIC's booked loss reserves were \$2,690,518 deficient on a net basis and \$2,568,367 deficient on a gross basis. T&M also concluded that the company needed to record as a liability on its financial statements a premium deficiency reserve of \$1,354,460.

8. On July 31, 2019, Seaver & Forck (the “Auditor”), the outside auditor for PSIC, issued a letter requesting an extension period for the annual audit of PSIC. The Auditor noted that it had received the T&M report, and concluded as follows:

Based on this actuarial report, loss reserves reported at December 31, 2018 by [PSIC] should be increased by approximately \$2,690,000.00. In addition, a premium efficiency reserve of approximately \$1,345,000. These two items, if recorded on the financial statements, will result in a negative net capital position for [PSIC]. If that occurs, our audit will need to reflect a going concern issue with related disclosures. As this has a very material impact on the company, we as auditors we are unable to issue an opinion without discussion with management...generating a response to the going concern issue.

9. Based on the Department’s investigation of PSIC, the Commissioner determined the company was in such condition that the further transaction of business would be hazardous financially to its policyholders, creditors, or the public. Accordingly, in August 2019 the Commissioner requested that PSIC’s Board of Directors consent to the rehabilitation of PSIC.

10. On August 11, 2019, PSIC’s Board of Directors held a meeting, during which the Commissioner made a presentation to the Board of Directors in support of rehabilitation of the company. The Directors were asked whether they were willing to make a capital contribution to the company. None of the Directors indicated a willingness to do so. With the exception of Jonathan Downard, who abstained from the vote, the Directors voted in favor of a resolution consenting to the rehabilitation of the company.

11. On August 20, 2019, this Court entered an *Order of Rehabilitation* (“Rehabilitation Order”) placing PSIC under rehabilitation pursuant to K.S.A. 40-3616. The Commissioner was appointed as the Rehabilitator of PSIC.

12. The Rehabilitator's staff engaged Kansas Medical Mutual Insurance Company (KAMMCO), a Kansas medical malpractice carrier. KAMMCO has acted as a consultant on various matters pertaining to the rehabilitation of PSIC, including analysis of claims, loss reserves, and underwriting, and options for transferring policies. KAMMCO confirmed early on it had no interest in acquiring PSIC outright.

13. An actuarial report dated May 10, 2019, provided to PSIC by Centric Actuarial Solutions, indicated premiums should be increased by a minimum of 15.5%.

14. Although new policies were not being issued due to inadequate premium rates, the Rehabilitator continued to allow policies to renew in order to maintain a book of business to enhance PSIC's possibility of acquisition by another insured. PSIC's marketing executive was employed by the Rehabilitator to assist in these efforts. She met with renewing policyholders and worked closely with the Rehabilitator's staff to maintain current business.

15. However, many policyholders replaced their coverage with another carrier or otherwise did not renew with PSIC. As of October 31, 2019, there were 267 in force policies providing coverage for 430 separate insureds, an 11% and 10.2% reduction in policies in force and number of insureds, respectively, from August 20, 2019.

16. The decline in annual premiums based on non-renewal or cancellation of policies since August 20, 2019, is estimated at \$253,721.17.

17. Around the time of the entry of the Rehabilitation Order, the Rehabilitator and her staff discovered previously undisclosed litigation *against* PSIC in Illinois in *Kidwell v. Physicians Standard Insurance Company, et al.*, Madison County, IL Case No. 18MR 599. This case involves a coverage dispute and is intertwined with MPM-PPIA.

18. Based on the reserving methodology utilized by KAMMCO, the Rehabilitator believes PSIC severely under-reserved its claims.

19. Based on input from third-parties, and a review of the case files, the Rehabilitator set appropriate reserves for each claim. Indemnity reserves for cases now total \$6,374,008.68. Conversely, at the time of the Rehabilitation Order, reserves established by PSIC only totaled \$803,335.

20. On June 1, 2019, PSIC's reinsurance program through WillisRe expired. WillisRe and the subscribing reinsurers have declined to renew the reinsurance coverage. In addition, the WillisRe reinsurance treaty only provided reinsurance for claims in excess of \$500,000, which did not comply with K.S.A. 40-1107.

21. The lack of reinsurance creates significant exposure and insolvency risk for PSIC on any claims made subsequent to June 1, 2019.

22. Since entry of the Order of Rehabilitation, PSIC has received notice of four new lawsuits against PSIC insureds.

23. Despite significantly decreased administrative expenses during rehabilitation, PSIC's financial condition has continued to deteriorate.

24. PSIC is insolvent in that its liabilities exceed its 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.

### **Count I – Liquidation of Insurer**

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

26. 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.”

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

28. 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.

29. PSIC’s consistent underwriting losses, under-reserving, low investment yields, and high expense ratios demonstrate a substantially deteriorating financial position, increasing the risk to policyholders, creditors and the public.

30. PSIC and its management have also engaged in transactions - without prior notice to or approval from the Commissioner - which pose a risk the financial condition of PSIC and a hazard to PSIC’s policyholders, creditors, and others. PSIC’s management has also submitted false or misleading financial and other statements to the Commissioner relating to PSIC.

31. PSIC has consistently entered into agreements in which Mr. Downard had a financial interest, without first establishing that these transactions are arms-length and reasonable in light of what might be charged by comparable entities.

32. The foregoing demonstrates that the further transaction of business by PSIC would hazardous, financially or otherwise, to PSIC’s policyholders, its creditors and its public.

Indeed, the Rehabilitator believes that liquidation of PSIC is the only viable course of action to take going forward.

WHEREFORE, pursuant to the Kansas Insurers Supervision, Rehabilitation, and Liquidation Act, including K.S.A. 40-3621, 40-3622, and 40-3625, the Commissioner requests the Court issue a final order and judgment of liquidation of PSIC that:

- a. Includes a finding that sufficient cause exists for liquidation of PSIC under K.S.A. 40-3621 because: (i) grounds continue to exist for rehabilitation of PSIC specified in K.S.A. 40-3616; (ii) PSIC is insolvent; and (iii) the further transaction of business by PSIC would be hazardous financially to its policyholders, creditors or to the public;
- b. Authorizes the Commissioner to take all actions permitted under the Kansas Insurers Supervision, Rehabilitation, and Liquidation Act, including, but not limited to, all actions permitted under K.S.A. 40-3622 and K.S.A. 40-3625;
- c. Provides 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.
- d. Provides that the Liquidator shall be authorized and empowered to take whatever additional actions are deemed necessary to accomplish the full and complete liquidation of PSIC.

- e. Provides that the Liquidator shall have no obligation to defend claims or to continue to defend claims subsequent to the entry of a Liquidation Order.
- f. Establishes the accounting/report intervals as required by K.S.A. 40-3622(d);
- g. Grants all other relief deemed just and appropriate.

Finally, the Commissioner requests that this Court determine the order of liquidation is final and immediately subject to appeal, and to grant such further decrees, orders and judgments under the provisions of K.S.A. 40-3605, *et seq.*, as the Court shall find advisable or necessary.

Respectfully submitted,

VICKI SCHMIDT, COMMISSIONER OF  
INSURANCE

*/s/ Kirsten A. Byrd*

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**CERTIFICATE OF SERVICE**

The undersigned certifies a true and correct copy of the above and foregoing was served by email on this 8th of November, 2019 by causing the same to be sent by electronic mail addressed to the following, and by filing the same via the Court's electronic filing system, causing service on all counsel of record:

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