

THE TEXAS DEPARTMENT OF	§	IN THE DISTRICT COURT OF
INSURANCE,	§	
<i>Plaintiff,</i>	§	
	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
BRIGHT HEALTHCARE INSURANCE	§	
COMPANY OF TEXAS	§	
<i>Defendant.</i>	§	455th JUDICIAL DISTRICT

SPECIAL DEPUTY RECEIVER’S FIRST EARLY ACCESS REPORT
PURSUANT TO TEX. INS. CODE § 443.303(c)

CANTILO & BENNETT, L.L.P., Special Deputy Receiver of Bright Healthcare Insurance Company of Texas (the “SDR” and “BHICOT,” respectively), files its *First Early Access Report Pursuant to TEX. INS. CODE § 443.303(c)* (the “Report”).

I. INTRODUCTION

1.1 The SDR files this Report as required by TEX. INS. CODE § 443.303(c). The SDR reports that there are assets available to distribute to the Texas Life and Health Insurance Guaranty Association (“TLHIGA”), the only guaranty association having obligations arising in connection with BHICOT’s liquidation. However, TLHIGA has not yet reported its Class 1 expenses, begun actually paying Class 2 covered claims, or had an opportunity to estimate its future expenses and reserves. Accordingly, the SDR is not able to request authority to make an early access distribution at this time. The SDR will seek authority to make an early access distribution once TLHIGA has begun reporting expenses, paying claims, and establishing reserves. In addition, the SDR is not able at this time to determine the amounts needed to be reserved for the expenses of liquidation or the amount of assets available to distribute.

II. JURISDICTION

2.1 On November 29, 2023, the Court entered an *Agreed Order Appointing Liquidator, Permanent Injunction, and Notice of Automatic Stay* appointing the Texas Commissioner of Insurance as Liquidator of BHICOT. Effective November 29, 2023, the Texas Commissioner of Insurance, as Liquidator, appointed CANTILO & BENNETT, L.L.P. as SDR of BHICOT.

2.2 This Court has jurisdiction over the subject matter of this Report and of the affected parties pursuant to TEX. INS. CODE § 443.005.

2.3 The SDR is authorized to file this Report pursuant to TEX. INS. CODE § 443.154. Report is not a matter that has been referred to the Special Master appointed in this proceeding in accordance with the Order of Reference to Master entered on November 29, 2023.

III. REPORT ON DISTRIBUTABLE ASSETS

3.1 TEX. INS. CODE § 443.303 (c) provides:

Within 120 days after the entry of an order of liquidation by the receivership court, and at least annually after the entry of the order, the liquidator shall apply to the receivership court for approval to make early access payments out of the general assets of the insurer to any guaranty associations having obligations arising in connection with the liquidation or shall report that there are no distributable assets at that time based on financial reporting as required in Section 443.016.

3.2 As of February 29, 2024, the SDR's Statements of Assets and Liabilities were filed with the Court, posted to the estate's web site, and served to all parties on the service list, including service to TLHIGA on March 15, 2024. See Exhibits 1-A and 1-B, respectively. As of the date of this Report, the SDR has not been able to determine the amount needed to be reserved from general assets for the "entire Section 443.301(a) expenses of the liquidation through and after its closure." TEX. INS. CODE § 443.303(a)(1). As more fully described below, the SDR cannot calculate the "distributable assets" at this time.

IV. GUARANTY ASSOCIATION CLAIMS

4.1 Once its obligation is triggered by a finding of insolvency and an order of liquidation, TLHIGA begins to report its expenses and claim payments to the SDR. As of the deadline for the filing of this Report, TLHIGA has not yet reported its expenses or begun claim payments. Certain claims in this estate will exceed TLHIGA's statutory maximum or "cap" of \$500,000.00. Such "over the cap" claims will have a Class 2 priority equal to TLHIGA's claims for paid losses. In order to calculate the "distributable assets" for early access purposes, the SDR will need to estimate the total amount of these claims. At this time, the SDR is not able to determine the "reserves for distributions on claims other than those of the guaranty associations falling within the priority classes of claims established in Section 443.301(b)." TEX. INS. CODE § 443.303(a)(2).

V. CONCLUSION

5.1 Pursuant to TEX. INS. CODE § 443.303(f), to file an application to make an early access distribution the SDR must provide the following information:

- (1) the amount reserved for the entire expenses of the liquidation through and after its closure and for distributions on claims, to the extent necessary and appropriate;
- (2) the computation of distributable assets and the amount and method of equitable allocation of early access payments to each of the guaranty associations; and
- (3) the most recent financial information filed with the National Association of Insurance Commissioners.

5.2 The SDR reports that it is premature to make an early access distribution. The financial reporting available to the SDR is not sufficient to file an application that complies with the statute. The SDR submits that it will file an early access application as soon as practicable.

VI. NOTICE

6.1 The SDR served this Report to all known parties in interest, including TLHIGA, and all individuals and entities identified by the SDR in the Certificate of Service by e-mail and, as noted, by mail or overnight delivery to certain government agencies. Further, this Report has been served in accordance with the provisions of TEX. INS. CODE § 443.303(e), which states:

Notice of each application for early access payments, or of any report required pursuant to this section, must be given in accordance with Section 443.007 to the guaranty associations that may have obligations arising from the liquidation. Notwithstanding the provisions of Section 443.007, the liquidator shall provide these guaranty associations with at least 30 days' actual notice of the filing of the application and with a complete copy of the application prior to any action by the receivership court. Any guaranty association that may have obligations arising in connection with the liquidation has:

- (1) the right to request additional information from the liquidator, who may not unreasonably deny such request; and
- (2) the right to object as provided by Section 443.007 to any part of each application or to any report filed by the liquidator pursuant to this section.

6.2 The statute does not provide for any action by the Receivership Court following the filing of the SDR's Report under TEX. INS. CODE § 443.303. TLHIGA has the right to object to this Report. *Id at Subsection (e)*. Absent an objection, the receivership court is not required to take any action in response to this Report. The SDR will provide TLHIGA with additional information upon request. If the receivership court is required to act on this Report, the SDR will seek to have the matter set no fewer than 30 days from the date of service.

VII. OFFER OF PROOF AND VERIFICATION

7.1 This Report is verified by the affidavit and certification pursuant to TEX. INS. CODE § 443.017(b) by Michael P. Marcin, partner in CANTILO & BENNETT, L.L.P., SDR of BHICOT.

VIII. NOTICE OF ELECTRONIC SERVICE REQUIREMENT

8.1 All pleadings filed in response to this Report or in regard to this estate shall be served by e-mail on the undersigned counsel and all parties shown in the attached Certificate of Service.

PRAYER

WHEREFORE, PREMISES CONSIDERED, the SDR respectfully requests that this Court, TLHIGA, and all other parties in interest take notice of this Report.

Respectfully submitted,

/s/ Greg Pierce
Gregory A. Pierce
State Bar No. 15994250
P.O. Box 40
Austin, Texas 78767
Tel: (512) 474-2154
gpierce@gpiercelaw.com

-and-

Christopher Fuller
State Bar No. 07515500
FULLER LAW GROUP
4612 Ridge Oak Drive
Austin, Texas 78731
Telephone: (512) 470-9544
cfuller@fullerlaw.org

**Attorneys for CANTILO & BENNETT, LLP,
Special Deputy Receiver of
Bright Healthcare Insurance Company of Texas**

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the *First Early Access Report Pursuant to TEX. INS. CODE § 443.303(c)* was served pursuant to the Order of Reference to Master, the Texas Rules of Civil Procedure and TEX. INS. CODE 443.007(d) on the following by email, except as specifically otherwise noted.

Via Email: specialmasterclerk@tdi.texas.gov
Tom Collins, Receivership Master
c/o Special Master's Clerk
RLO MC-FRD
PO Box 12030
Austin, TX 78711-2030

Via Email: Edwin.Hartsfield@tdi.texas.gov
Edwin Hartsfield
TEXAS DEPARTMENT OF INSURANCE
RLO MC-FRD
PO Box 12030
Austin, TX 78711-2030

Via Email: John.Walker@tdi.texas.gov
John Walker
TEXAS DEPARTMENT OF INSURANCE
RLO MC-FRD
PO Box 12030
Austin, TX 78711-2030

Via Email: Vane.Hugo@tdi.texas.gov
Vane Hugo
TEXAS DEPARTMENT OF INSURANCE
RLO MC-FRD
PO Box 12030
Austin, TX 78711-2030

Via Email: Sandra.Salazar@tdi.texas.gov
Sandra Salazar
General Counsel Division
Office of Financial Counsel
TEXAS DEPARTMENT OF INSURANCE
PO Box 12030
Austin, TX 78711-2030

Via e-Service: Shawn.Martin@tdi.texas.gov
Shawn Martin
General Counsel Division
Office of Financial Counsel
TEXAS DEPARTMENT OF INSURANCE
PO Box 12030
Austin, TX 78711-2030

Via e-Service: Zachary.Rhines@oag.texas.gov
Zachary L. Rhines
Assistant Attorney General
General Litigation Division
OFFICE OF THE TEXAS ATTORNEY GENERAL
P.O. Box 12548, Mail Stop 01901
Austin, Texas 78711-2548
Counsel for Texas Department of Insurance

Via e-Service: jrixen@rixentlaw.com
Jacqueline Rixen
RIXENLAW
8500 North Mopac Expy, Suite 605
Austin, Texas 78759
*Counsel for the Texas Life and Health
Insurance Guaranty Association*

Via e-Service: sstrickland@mwlaw.com
Stanton Strickland
MITCHELL, WILLIAMS, SELIG, GATES &
WOODYARD, P.L.L.C.
500 W. 5th Street, Ste. 1150
Austin, Texas 78701
*Counsel for Bright Healthcare Insurance
Company of Texas*

Via First Class Mail
INTERNAL REVENUE SERVICE
Special Procedures Branch
300 East 8th Street, Suite 352
Mail Stop 5026AUS
Austin, Texas 78701

Via Email:: Milan.Shah@cms.hhs.gov

Via Email: Kelly.Drury@cms.hhs.gov

Milan Shah

Kelly Drury

Centers for Medicare & Medicaid Services

Center for Consumer Information and

Insurance Oversight

7501 Wisconsin Ave

Bethesda, MD 21814

Via Email: ASimon@fmdlegal.com

Via Email: Bgould@fmdlegal.com

Adrienne J. Simon

Blake Gould

Fultz Maddox Dickens PLC

101 South Fifth Street, 27th Floor

Louisville, KY 40202

Counsel for THC Houston, LLC d/b/a Kindred

Hospital Houston Northwest

/s/ Greg Pierce

Gregory A. Pierce

**SPECIAL DEPUTY RECEIVER'S VERIFICATION AND CERTIFICATION
PURSUANT TO TEX. INS.CODE ANN. §443.017(b)**

AFFIDAVIT OF MICHAEL P. MARCIN

State of Texas

County of Travis

BEFORE ME, the undersigned authority appeared Michael P. Marcin, who after being by me duly sworn, stated the following under oath:

1. "My name is Michael P. Marcin. I am of sound mind, capable of making this affidavit, and am competent to testify to the matters contained in this affidavit.
2. I am a partner in CANTILO & BENNETT, L.L.P., the Special Deputy Receiver of Bright Healthcare Insurance Company of Texas, Inc. (the "SDR" and "BHICOT" respectively), I am duly authorized to make this Affidavit on behalf of the SDR.
3. I have reviewed the *First Early Access Report Pursuant to TEX. INS. CODE § 443.303(c)* and the facts stated therein are true and correct based on my personal knowledge, my review of estate records and my consultation with the staff and subcontractors.
4. I certify that the exhibits, books, accounts, records, papers, correspondence, and/or other records and documents attached hereto were produced pursuant to TEX. INS. CODE § 443.017, are either true and correct copies of records of BHICOT and were received from the custody of BHICOT or found among its effects, or were created by and filed with the Receiver's office in connection with the receivership of this delinquent company, and are held by the Special Deputy Receiver in its official capacity."

By: 
Michael P. Marcin

SUBSCRIBED AND SWORN TO BEFORE ME on March 19, 2024, by Michael P. Marcin, Special Deputy Receiver of Bright Healthcare Insurance Company of Texas, Inc.


Notary Public

