

18

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO
CIVIL DIVISION

FINAL APPEALABLE ORDER

ANN H. WOMER BENJAMIN,
Superintendent,
Ohio Department of Insurance, in her Capacity
as Rehabilitator of The Estate of Colonial
Insurance Company

Plaintiff,

v.

COLONIAL INSURANCE COMPANY,
(In Rehabilitation)

Defendant.

CASE NO. 03 CVC 01 00597

JUDGE DAVID FAIS

CLERK OF COURT - CV
04 APR - 5 PM 3/9
COURT

ORDER APPROVING REHABILITATION PLAN FOR COLONIAL INSURANCE COMPANY

This matter came before the Court upon the Plaintiff's filing of a Motion for Approval of the Rehabilitation Plan for Colonial Insurance Company ("Motion") and a Plan of Rehabilitation ("Plan"), pursuant to R.C. 3903.14(D). After having heard and considered the facts set forth in Plaintiff's Motion and Plan, this Court makes the following findings of fact:

1. On January 16, 2003, the Court placed Colonial Insurance Company ("Colonial") into rehabilitation. Colonial was placed into rehabilitation because it was in such condition that the further transaction of business would have been financially hazardous to its policyholders, creditors, or the public. Further, Colonial's Board of Directors had previously consented to the appointment of a Rehabilitator on November 26, 2002.
2. As part of the Order placing Colonial into rehabilitation, this Court appointed Ann H. Womer Benjamin, Superintendent, Ohio Department of Insurance, as the Rehabilitator ("Rehabilitator") of Colonial.

3. Pursuant to R.C. 3903.13 to 3903.16, the Rehabilitator drafted and proposed a Rehabilitation Plan ("Plan") for Colonial to ensure that Colonial continues to meet its obligations to existing policyholders. The Plan was filed with this Court on November 7, 2003.
4. On January 27, 2004, the Rehabilitator filed an Addendum to the Plan. The Addendum made four clarifications to the Plan. No material changes to the original Plan were made.
5. Pursuant to this Court's Order, all objections to the Plan and/or other matters affecting the rehabilitation were to be filed with the Court by February 11, 2004.
6. A total of nine (9) objections were received. Of those nine (9) objections, three (3) were received from Colonial policyholders, four (4) were received from Colonial employees, one (1) was received from an individual who is both a Colonial employee and policyholder, and one (1) was received from an insurance agent. There were no substantive objections regarding the Plan's financial integrity or its fairness to all interested parties. Rather, the objections related to tangential issues of the Plan: (1) one policyholder stated only a general objection; (2) one policyholder objected to the timing of the Plan's filing; (3) two policyholders expressed a general apprehension regarding the continuation of their insurance benefits; (4) the employee objection letters expressed dissatisfaction with the decline of Colonial as a viable insurance company and the impact of Colonial's cessation of business operations on the employees' jobs; and (5) the insurance agent's objection letter expressed concerns regarding the payment of commissions to Colonial's Medicare Supplement agents. However, these concerns are directly addressed by the applicable terms of the Plan.

7. The Rehabilitator's Response to Plan Objections was filed with the Court on March 3, 2004.
8. Prior to and during rehabilitation, Colonial was and continues to be involved in a class action lawsuit: *Mary E. Nunneker, et al. v. Colonial Insurance Company, et al.*, CV00412736 & CV01454848 (consolidated) (Cuyahoga Cty. Ct. Com. Pleas) ("Nunneker"). The initial class action ("Nunneker I") was filed on July 10, 2000, naming only the Colonial Insurance Company as a Defendant. A second class action ("Nunneker II") was filed on November 29, 2001, naming the following Colonial board members as Defendants: Nancy J. Holz, Mark J. Forrester, Ralph D. Kovanda, and Cathleen Delaney. The classes were certified on December 3, 2001, and March 13, 2002, respectively. Subsequently, the court consolidated both cases.
9. On December 11, 2003, a mediation occurred between all of the interested parties to the Nunneker class action. Representatives for the following parties attended: Colonial; the Nunneker class action plaintiffs; and the Cincinnati Insurance Company ("Cincinnati"), Colonial's directors' and officers' liability insurer. The mediation resulted in on-going settlement negotiations between the parties and the parties to the Nunneker class action believe that they have reached a settlement in principal.
10. In an additional matter, a Settlement Agreement has been reached between Colonial and Towers Perrin Forster & Crosby, Inc., d/b/a Tillinghast ("Towers Perrin") that resolves any and all outstanding claims Colonial has against Towers Perrin arising out of the performance of Tillinghast's actuarial services for Colonial (the "Tillinghast Settlement"). Under the terms of the Plan, the Nunneker class action plaintiffs were to be assigned any and all of Colonial's outstanding claims against Towers Perrin. The

Tillinghast Settlement eliminates Colonial's need to assign its claims to the Nunneker plaintiffs. Instead, the Nunneker plaintiffs, who have agreed and consented to Colonial's entry of the Tillinghast Settlement, will receive from Colonial all of the Settlement's proceeds paid by Towers Perrin to Colonial if the class action settlement proceeds as currently anticipated. There is no material alteration to the Plan because the Nunneker plaintiffs will receive from Colonial the Settlement payment made by Towers Perrin to Colonial via a pass-through of the Settlement. Thus, the Plan's assignment of the Tillinghast claims to the Nunneker plaintiffs is now moot.

11. A proposed settlement of the Nunneker class action is being completed and will be submitted to the Court in which the class action is pending. Pursuant to the settlement in principal, both Colonial's directors and officers named as individual Defendants and Cincinnati will be released from any further liability.

Upon further deliberation, the Court finds the Rehabilitator's Motion and Plan to be well-taken and it is hereby ORDERED, ADJUDGED and DECLARED as follows:

1. The Plan and its Addendum, in the judgment of the Court, are fair and equitable to all parties concerned and comply with the applicable provisions of R.C. 3903.14.

2. The Plan and its Addendum are approved in their entirety as respectively submitted by the Rehabilitator to this Court on November 7, 2003, and on January 27, 2004.

The Plan, except for the assignment of the Tillinghast claims which is now moot because of the Tillinghast Settlement and except for the dismissal of Colonial and the Directors and Officers in the Nunneker class action because of the settlement in principal, includes, but is not limited, to the following provisions:

- a. Colonial's Convalescent Care ("CC") line of business will continue in runoff, allowing all existing CC policyholders to maintain their coverage;
 - b. Colonial's Medicare Supplement ("MS") line of business may be sold as an entire block to another insurer, allowing all existing MS policyholders to maintain their coverage with such new insurer;
 - c. Colonial's MS agents will be paid their accrued commissions. Colonial's CC agents will receive their accrued commissions following payment of all CC policy liabilities;
 - d. As Colonial's volume of transactions and work load decreases, Colonial's employees will be terminated and given an industry standard severance package; and
 - e. All of Colonial's administrative expenses will continue to be paid as they are incurred.
3. The Addendum to the Plan consists of the following four points:
- a. In the event that all claims are ultimately paid by Colonial, as contemplated under the Plan, and additional assets remain to be distributed to Colonial's policyholders ("surplus assets"), the CC policyholders who have current policies as of the date of approval of the Plan and any terminated CC policyholders who file a claim in the class action will have the right to intervene in Colonial's rehabilitation to seek a portion of the surplus assets;
 - b. The Rehabilitator states that she would prefer to avoid an assessment of Colonial's policyholders. Thus, the Plan attempts to meet all of Colonial's obligations without any assessment of Colonial's policyholders;

c. If the Rehabilitator is able to obtain a new provider for Colonial's MS policies, to the extent that there is profit from the sale of the MS business to a new provider, that profit will be included with Colonial's current assets to be used for the benefit of all remaining policyholders; and

d. The Plan as filed on November 7, 2003, proposed the release of the Directors and Officers of Colonial who had been named as Defendants in the Class Action case of *Mary E. Nunneker, et al. v. Colonial Insurance Company, et al.*, CV00412736 & CV01454848 (consolidated) (Cuyahoga Cty. Ct. Com. Pleas). Through this Addendum, those Directors and Officers of Colonial, who have been named as Defendants in the Nunneker case, will not be released from liability; however, the personal assets of those Directors and Officers will not be pursued to satisfy any judgment that the Nunneker plaintiffs might obtain.

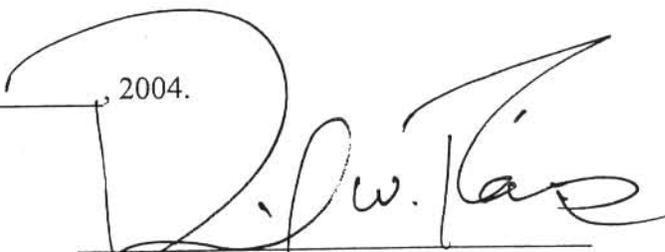
It is further ORDERED that the Court approves the Plan for Colonial's CC runoff and the sale of the remaining block of Colonial's MS business as otherwise described in the Plan.

It is further ORDERED that the Rehabilitator shall implement and carry out the Plan and its Addendum according to the applicable provisions of R.C. 3903.14.

It is further ORDERED that the Rehabilitator will continue to monitor the implementation of the Plan and its Addendum to ensure that Colonial's rehabilitation adheres to the provisions of the Plan and its Addendum.

It is further ORDERED that this Court shall retain jurisdiction to hear and determine all matters relating to the rehabilitation of Colonial and the Rehabilitation Plan.

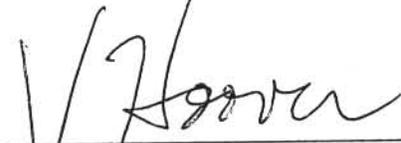
DATED this ____ day of _____, 2004.



JUDGE DAVID FAISS

3-18-04

APPROVED:



VALORIA C. HOOVER (0059596)
One Cleveland Center, 20th Floor
1375 East Ninth Street
Cleveland, OH 44114-1793
Telephone: (216) 696-8700
Facsimile: (216) 621-6536
Counsel for Plaintiff, Ann H. Womer Benjamin,
Superintendent, Ohio Department of Insurance,
in her Capacity as Rehabilitator of the Estate
of Colonial Insurance Company