

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

HAROLD T. DURYEE
SUPERINTENDENT OF INSURANCE
STATE OF OHIO
2100 STELLA COURT
COLUMBUS, OHIO 43266-0566

Plaintiff,

vs.

MAGNACARE HEALTH PLAN
2133 LURAY AVENUE
CINCINNATI, OHIO 45206-2604

Defendant.

CASE NO. 91CVH08-6503

JUDGE Thompson

JOURNAL ENTRY AND ORDER APPOINTING LIQUIDATOR

This cause came before this Court on the complaint of Harold T. Duryee, Superintendent of Insurance of the State of Ohio, pursuant to R.C. §3903.17. Plaintiff appeared by and through the Ohio Attorney General, Lee Fisher.

After having heard and considered the facts set forth in Plaintiff's complaint, this Court finds that the law and facts are as Plaintiff has alleged in his complaint and that there exists a present and urgent necessity for the immediate entry of this Order. This Court further finds that:

1. Defendant MagnaCare Health Plan ("MagnaCare") is licensed under the laws of the State of Ohio as a health maintenance organization, has done business in Ohio, and is subject to the provisions of R.C. Chapter 3903.

2. Defendant MagnaCare is in such condition that its further transaction of business would be financially hazardous

to its policyholders, creditors or the public as described in R.C. §3903.17(C).

3. a. Defendant MagnaCare is insolvent as defined in R.C. §3903.01(K) and as described in R.C. §3903.17(B).

3. b. The board of trustees of MagnaCare consented to the liquidation of MagnaCare.

4. All persons, other than the Liquidator of MagnaCare, should be permanently enjoined and restrained from conducting, operating or engaging in the business of insurance or any other business of Defendant MagnaCare and from removing or disposing of any of the assets, books, records or property of Defendant MagnaCare, or of any debt or claim owed to, by or for said Defendant, without the express written authorization of the Liquidator.

5. Without the appointment of a Liquidator, Defendant MagnaCare is not in a condition to continue its business and may cause harm to the interests of its policyholders, subscribers, enrollees, creditors or the public in general, and that unless permanently restrained, Defendant MagnaCare will be forced to operate in a condition contrary to the best interests of Defendant MagnaCare's policyholders, creditors and the general public.

6. Without the appointment of a Liquidator, the assets of Defendant MagnaCare may become dissipated, causing irreparable and immediate injury of the policyholders, Defendant MagnaCare's policyholders, subscribers, enrollees, creditors and the general public.

It is hereby ORDERED, ADJUDGED and DECLARED as follows:

1. Sufficient cause exists for the liquidation of Defendant MagnaCare. Plaintiff's Motion for an Order of Liquidation is well taken and is hereby granted. Defendant is ordered into liquidation pursuant to the provisions of R.C. Chapter 3903.

2. Harold T. Duryee, Superintendent of Insurance for the State of Ohio, and his successors in office, is appointed Liquidator of Defendant MagnaCare for the purpose of liquidation of Defendant MagnaCare, pursuant to the provisions of R.C. Chapter 3903. Further, the Liquidator has appointed Lynne Hengle as Chief Deputy Liquidator, and Richard R. Clayton, Timothy J. O'Leary and Theresa June Potts as Deputy Liquidators, in accordance with R.C. §3903.21(A)(1).

3. The Liquidator shall forthwith take possession of all assets of Defendant MagnaCare, of any kind whatsoever and wherever located, whether in the possession of Defendant MagnaCare or any other person, including but not limited to its officers, trustees, employees, consultants, attorneys, agents, shareholders, parent, subsidiary or affiliated corporations or those acting in concert with any such persons, including but not limited to, all real property, offices maintained by MagnaCare, contracts, deposits, securities, rights of action, accounts, documents, papers, evidences of debt, bonds, debentures, mortgages, letters of credit, certificates of deposit, furniture, fixtures, office supplies, safe deposit boxes, books and records of Defendant MagnaCare and administer them under the general supervision of this Court.

4. The Liquidator shall be and is hereby vested by operation of law with the title to all assets of Defendant MagnaCare, including but not limited to, all real property, contracts, deposits, securities, rights of action, accounts, documents, papers, evidences of debt, bonds, debentures, mortgages, letters of credit, certificates of deposit, furniture, fixtures, office supplies, safe deposit boxes, books and records of Defendant, wherever located, as of the date of the entry of this Order of Liquidation, and is authorized to deal with same in his own name as Liquidator.

5. The Liquidator is directed to collect the assets of MagnaCare which are economically feasible to collect, including but not limited to, funds held by MagnaCare agents, subagents, brokers, reinsurers and reinsurance pools, solicitors, service representatives or any other person, which are due and unpaid to Defendant MagnaCare, including but not limited to, premium, unearned commissions, agents' balances and agents' reserve funds.

6. The Liquidator is vested with the right, title and interest in all funds recoverable under the treaties, contracts and agreements of reinsurance heretofore entered into by Defendant MagnaCare, as the ceding insurer, and that all reinsurers and reinsurance pools, brokers, agents, solicitors, service representatives, adjusters, attorneys or any other persons involved with Defendant MagnaCare or such treaties, contracts or agreements are permanently restrained and enjoined from making any settlements with any claimant, policyholder or any person other than the Liquidator, without the approval of

the Court, or taking any other action with respect to such treaties, contracts or agreements without the written permission or consent of the Liquidator.

7. The Liquidator is authorized to take such action as he considers necessary or appropriate to liquidate Defendant MagnaCare, including but not limited to the following:

(a) Appoint one or more special deputies to act for him under Sections 3903.01 to 3903.59 of the Revised Code, and determine the deputies' reasonable compensation. Special deputies have all the powers of the Liquidator and shall serve at the pleasure of the Liquidator;

(b) Employ employees and agents, actuaries, accountants, appraisers, consultants and such other personnel the Liquidator may consider necessary to assist in the liquidation;

(c) Fix the reasonable compensation of employees, agents, actuaries, accountants, appraisers, consultants and such other personnel with the approval of the Court;

(d) Pay reasonable compensation to persons appointed and defray from the funds or assets of Defendant MagnaCare all expenses of taking possession of, conserving, conducting, liquidating, disposing of or otherwise dealing with the business and property of Defendant MagnaCare. In the event that the property of Defendant MagnaCare does not contain sufficient cash or liquid assets to defray the costs incurred, the Superintendent of Insurance may advance the costs so incurred out of any appropriation of the maintenance of the Department of Insurance. Any amounts so advanced for expenses of administration shall be repaid to the Superintendent for the

use of the Department out of the first available money of Defendant MagnaCare;

(e) Hold hearings, subpoena witnesses to compel their appearance, administer oaths, examine any person under oath and compel any person to subscribe to his testimony after it has been correctly reduced to writing, and in connection therewith require the production of any books, papers, records or other documents which the Liquidator considers relevant to the inquiry;

(f) Collect all debts and monies due and claims belonging to Defendant MagnaCare, wherever located, which are economically feasible to collect. For this purpose, the Liquidator may do any of the following:

(i) Institute timely actions in other jurisdictions, in order to forestall garnishment and attachment proceedings against such debts;

(ii) Do such other acts as are necessary or expedient to collect, conserve or protect its assets or property, including the power to sell, compound, compromise or assign debts for purpose of collection upon such terms and conditions as he considers best;

(iii) Pursue any creditors' remedies available to enforce his claims;

(g) Conduct public or private sales of the assets and property of Defendant MagnaCare;

(h) Use assets of the estate of Defendant MagnaCare to transfer policy obligations to a solvent assuming insurer, or health maintenance organization, if the transfer can be

arranged without prejudice to applicable priorities under R.C. 3903.42;

(i) Acquire, hypothecate, encumber, lease, improve, sell, transfer, abandon or otherwise dispose of or deal with, any property of Defendant MagnaCare at its market value or upon such terms and conditions as are fair and reasonable. The Liquidator also may execute, acknowledge and deliver any and all deeds, assignments, releases and other instruments necessary or proper to effectuate any sale of property or other transaction in connection with the liquidation;

(j) Borrow money on the security of Defendant MagnaCare's assets, or without security, and execute and deliver all documents necessary to that transaction for the purpose of facilitating the liquidation;

(k) Enter into such contracts as are necessary to carry out this Order of Liquidation, and affirm or disavow any contract or similar obligation to which Defendant MagnaCare is a party;

(l) Continue to prosecute and to commence in the name of Defendant MagnaCare or in the Liquidator's own name any and all suits and other legal proceedings, in this state or elsewhere, and to abandon the prosecution of claims the Liquidator considers unprofitable to pursue further; if Defendant MagnaCare is dissolved under R.C. 3903.20, to apply to any court in this state or elsewhere for leave to substitute the Liquidator for Defendant MagnaCare as plaintiff;

(m) Prosecute any action which may exist on behalf of the creditors, policyholders, subscribers, enrollees or

shareholders of Defendant MagnaCare against any director, trustee or officer of Defendant MagnaCare or any other person;

(n) Remove any or all records and property of Defendant MagnaCare to the offices of the Superintendent or to such other place as may be convenient for the purposes of efficient and orderly execution of the liquidation. All guaranty associations, including foreign guaranty associations, shall have such reasonable access to the records of Defendant MagnaCare as is necessary for them to carry out their statutory obligations;

(o) Deposit in one or more banks in this state such sums as are required for meeting current administration expenses and dividend distributions;

(p) Invest all sums not currently needed, unless the Court orders otherwise;

(q) File any necessary documents for record in the office of any recorder of deeds or record office in this state or elsewhere where property of Defendant MagnaCare is located;

(r) Assert all defenses available to Defendant MagnaCare as against third persons, including but not limited to, statutes of limitation, statutes of frauds and the defense of usury. A waiver of any defense by Defendant MagnaCare after a complaint in liquidation has been filed does not bind the Liquidator. Whenever any guaranty association, including any foreign guaranty association has an obligation to defend any suit, the Liquidator shall give precedence to such obligation and may defend only in the absence of a defense by such guaranty association;

(s) Exercise and enforce all the rights, remedies and powers of any creditor, shareholder or policyholder, including any power to avoid any transfer or lien that may be given by the general law and that is not included under R.C. Sections 3903.26 to R.C. 3903.28;

(t) Intervene in any proceeding wherever instituted that might lead to the appointment of a receiver, conservator, rehabilitator, liquidator, or trustee, and to act as the receiver, conservator, rehabilitator, liquidator, or trustee in such proceedings whenever the appointment is offered;

(u) Exercise all powers now held or hereafter conferred upon receivers, conservators, rehabilitators, or liquidators by the laws of this state not inconsistent with the provisions of R.C. Sections 3903.01 to R.C. 3903.59;

(v) Take possession of all of Defendant MagnaCare's securities and deposits filed or on deposit with the Superintendent of Insurance for the State of Ohio, and any other state superintendent of insurance or any other public official;

(w) The enumeration of the above described powers and authority of the Liquidator shall not be construed as a limitation upon him, nor shall it exclude in any manner his right to do such other acts not herein specifically enumerated, or otherwise provided for, as may be necessary or appropriate for the accomplishment of or in aid of the purpose of liquidation of Defendant MagnaCare.

8. The Liquidator is hereby authorized under R.C. 3903.26, 3903.27 and 3903.285 to avoid fraudulent or preferential transfers.

9. The Liquidator is hereby authorized, permitted and allowed to sell, assign and transfer the Corporate Charter of Defendant MagnaCare and any and all insurance licenses or certificates of authority held by Defendants in such a method and manner as may be approved by this Court.

10. The Liquidator is hereby authorized to pay any reasonable administrative expenses incurred during the course of the Liquidation of MagnaCare, including but not limited to, attorneys fees, accounting fees and consulting fees, as administrative expenses under R.C. Section 3903.42.

11. The Liquidator is hereby authorized to do all other things permitted by law to effectuate the Liquidation of Defendant MagnaCare.

12. The Liquidator shall take all steps necessary to place all bank and trust accounts, securities, certificates of deposit, letters of credit and other financial instruments and accounts of Defendant MagnaCare into his own name, and shall use any accounts of Defendant MagnaCare as an operating fund for the liquidation of Defendant MagnaCare, and shall keep a true and correct account of any and all receipts of expenditures made by the Liquidator in the course of the liquidation of Defendant MagnaCare.

13. The Liquidator is hereby granted and given all powers and authority under any and all statutes and under the common law of this state authorizing the appointment of insurance

company liquidators and not inconsistent with R.C. Chapter 3903, and, particularly, be and is hereby granted and given all powers and authority contained in R.C. Chapter 3903, including, without limitation, those enumerated herein.

14. All persons, including, but not limited to, all officers, directors, trustees, employees or agents of Defendant MagnaCare, or any other person, firm, association, partnership, corporation or other entity in charge of any aspect of Defendant MagnaCare's affairs, including but not limited to, any insurer, provider, bank, savings and loan association, financial or lending institution, broker, stock or mutual association, or any parent, subsidiary or affiliated corporation, partner, agent, attorney, adjuster, consultant, or any other representative acting in concert with Defendant MagnaCare, shall cooperate with the Liquidator in the performance of his duties. The directive "to cooperate" shall include, but not be limited to, a duty to do the following:

a. Reply promptly in writing to any inquiry from the Liquidator requesting such a reply; and

b. Make available to the Liquidator any books, accounts, documents, agreements, records, information or property of, or pertaining to, Defendant MagnaCare in his possession, custody or control.

15. All persons, other than the Liquidator, are hereby permanently enjoined and restrained, except under the express authorization of the Liquidator or by the further order of this Court, from conducting, operating or engaging in the business

of insurance or any other business by or on behalf of Defendant MagnaCare.

16. All persons, other than the Liquidator, are hereby permanently enjoined and restrained from dealing with or permitting to be done any action which might waste or dispose of the property or assets of Defendant MagnaCare; from disposing of, using, transferring, selling, assigning, cancelling, hypothecating or concealing in any manner or in any way, any books, records, contracts, equipment, money, accounts receivable, securities, bonds, assets, notes, funds, letters of credit, evidences of debt, safe deposit boxes, accounts, certificates of deposit, or any other property or asset of Defendant MagnaCare, whether real, personal or otherwise, or of any kind or nature, wherever situated, including any claims or causes of action that Defendant MagnaCare might have against any person, firm, association or corporation, belonging to, owned by, in the possession of, or claimed by Defendant MagnaCare; and from disposing of any property or asset owned, owed to, or held for the benefit of Defendant MagnaCare, or any property or asset held individually, jointly, or severally, for Defendant MagnaCare, whether such property or asset owned by or held for such Defendant MagnaCare in the name of or for the benefit of Defendant MagnaCare or under any other name.

17. All persons, including but not limited to, all officers, directors, employees, trustees, and agents of Defendant MagnaCare, shall, upon the request of the Liquidator by sworn written statement, inform the Liquidator of the nature, description and location of all property or assets of

Defendant MagnaCare not located on the premises of Defendant MagnaCare, including but not limited to, all bank accounts, safe deposit boxes, safes, securities, bonds, certificates of deposit, cash, letters of credit or any other property, real, personal, or otherwise.

18. All banks, savings and loan associations, trust companies or any other financial institutions or persons, are hereby restrained from allowing to be withdrawn or concealed in any manner any property or asset of Defendant, except under express authorization of the Liquidator or by further order of the Court; or from exercising any form of set-off, alleged set-off, lien, or any form of self-help, or refusing to transfer funds or assets to the Liquidator's control, pending further order of the Court.

19. (a) All agents, brokers, premium finance companies, or any other persons responsible for the payment of a premium and unearned commission, as shown on the records of Defendant MagnaCare, shall pay to the Liquidator any unpaid earned premium or unearned premium or unearned commissions due Defendant MagnaCare at the time of the entry of this Order. No credit or set-off shall be allowed in favor of such person against his account with Defendant MagnaCare for the unearned portion of the premium on any cancelled policy unless such policy was cancelled prior to the date of entry of this Order;

(b) An insured shall be obligated to pay any unpaid premium due Defendant MagnaCare, as shown on the records of Defendant MagnaCare, which would not otherwise be payable by any agent, broker, premium finance company or any other person.

20. All persons, including but not limited to, all agents and brokers of Defendant MagnaCare are permanently enjoined and restrained from returning any unearned premium, or any money in their possession collected for premiums or any other obligation due to Defendant MagnaCare, to policyholders, their assigns or any other person, and all premium finance companies which have entered into contracts to finance a premium for a policy which was issued by Defendant MagnaCare are permanently enjoined and restrained from returning any such premiums or any monies due on an obligation of or to Defendant MagnaCare and in their possession to anyone other than the Liquidator, and all such persons shall turn over such funds in their possession to the Liquidator.

21. Defendant MagnaCare and its respective officers, directors, agents, employees, shareholders, policyholders, subscribers and enrollees and all other persons are permanently enjoined and restrained from bringing or further prosecuting any claim of any nature, including but not limited to, any counterclaim, set-off, cross-claim, or third party complaint, any action before any administrative agency, including boards and commissions administering workers compensation, occupational diseases or similar laws of the State of Ohio, any other state or the United States, or any other proceeding against Defendant MagnaCare, or the Liquidator, or from obstructing or interfering in any way with the Liquidator's conduct of his duties as Liquidator, the business of Defendant MagnaCare, the possession, title and rights of the Liquidator in and to all property and assets of Defendant MagnaCare and

from obtaining any preferences, judgments, attachments, or any other liens or encumbrances, making any levy or attempting to exercise any rights in a security interest, pledge, lien or other encumbrance by the transfer, sale, attachment, disposal or exercise of any such rights against Defendant MagnaCare or its property and assets, or otherwise interfering with the Liquidator's right, title and interest to all property, and assets of Defendant MagnaCare.

22. No civil action shall be commenced against Defendant MagnaCare or the Liquidator, whether in this state or elsewhere, nor shall any such existing actions be maintained or further prosecuted after the date of entry of this Order. Whenever, in the Liquidator's judgment, protection of the estate of Defendant MagnaCare necessitates intervention in an action against Defendant MagnaCare that is pending outside this state, he may intervene in the action. The Liquidator may defend any action in which he intervenes under this section at the expense of the estate of Defendant MagnaCare.

23. All persons, including all claimants of any nature, are hereby permanently restrained and enjoined from commencing, maintaining or further prosecuting any direct or indirect actions against reinsurers of Defendant MagnaCare to contest or interfere with the Liquidator's exclusive right, title and interest to funds recoverable under treaties and agreements of reinsurance heretofore entered into by Defendant MagnaCare as the ceding insurer.

24. The Liquidator is authorized to, upon or after this Order for Liquidation, within two years or such time in

addition to two years as applicable law may permit, commence an action or proceeding on behalf of the estate of Defendant MagnaCare upon any cause of action against which the period of limitation fixed by applicable law has not expired at the time of the filing of Plaintiff's Motion for an Order of Liquidation. Where, in any agreement, a period of limitation is fixed for commencing a suit or proceeding upon any claim, or for filing any claim, proof of claim, proof of loss, demand, notice or the like, or where in any proceeding, judicial or otherwise, a period of limitation is fixed, either in the proceeding or by applicable law, for taking any action, filing any claim or pleading, or doing any action, and where in any such case the period has not expired at the date of the filing of the Motion for an Order of Liquidation, the Liquidator may, for the benefit of Defendant MagnaCare, take any such action or do any such act, required of or permitted to Defendant MagnaCare within a period of one hundred eighty days subsequent to the entry of this Order for Liquidation, or within such further period as is shown to the satisfaction of the Court not to be unfairly prejudicial to the other party.

25. Any guaranty association, including any foreign guaranty association, shall have standing to appear in any court proceeding concerning the liquidation of Defendant MagnaCare if such association is or may become liable to act as a result of such liquidation.

26. (a) All insurance policies, bonds, and other similar obligations or contracts of Defendant MagnaCare now in force, shall stand canceled as of the 30th day after the date of the

Entry of the Order of Liquidation. All policies, bonds or other similar obligations or contracts with normal expiration dates prior thereto and policies terminated by policyholders, subscribers, enrollees or any other authorized person, or lawfully canceled by Defendant MagnaCare before such date, shall stand canceled as of such earlier date.

(b) The termination of any insurance policies, bonds and other similar contracts as set forth in (a) above shall supercede and control over any other contractual or statutory provisions pertaining to the renewal of such policies, bonds or other similar contracts.

27. All third persons dealing with interests in real property of Defendant MagnaCare are charged with notice of this Order when this Order is filed under Ohio Civil Rule 58 or a certified copy of the judgment is filed under Ohio Civil Rule 3(F) with the clerk of court of the court of common pleas in the county where the property is located, or, in jurisdictions outside of Ohio, when a copy of this Order or a certified copy of the judgment is filed with the clerk of court of common pleas of such county. All third persons dealing with interests in any other property of Defendant MagnaCare are charged with notice of this Order when the Order is filed under Ohio Civil Rule 58, or a certified copy of the judgment is filed under Ohio Civil Rule 3(F) with the clerk of the court of common pleas of the court in which the principal business of Defendant MagnaCare is conducted, or in which its principal office or place of business is located.

28. Upon the issuance of this Order, the rights and liabilities of Defendant MagnaCare and of its policyholders, creditors, and all other parties interested in the estate of Defendant MagnaCare shall become fixed as of the date of this Order, except as provided in R.C. 3903.37.

29. This Court requests that, in all actions or proceedings pending or hereafter filed outside of the State of Ohio, involving Defendant MagnaCare, full faith and credit be given to this Order.

30. This Court shall retain jurisdiction in this case for the purpose granting such other and further relief as the nature of this case or in the interests of the policyholders, creditors, stockholders or the members of the public may require.

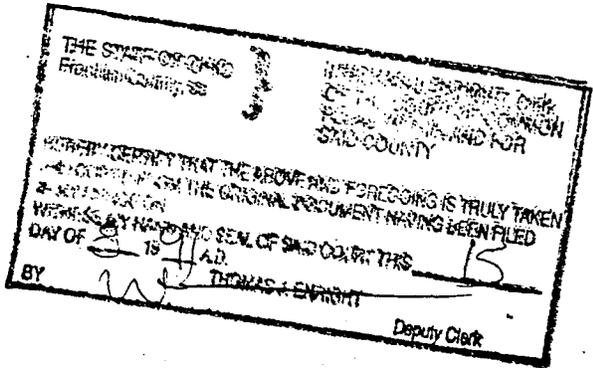
31. If any provision of this Order or the application thereof is for any reason held to be invalid, the remainder of this Order and the application thereof to other persons or circumstances shall not be affected thereby.

IT IS SO ENTERED THIS _____ DAY OF _____, 19__.

B. L. Thompson
JUDGE

Approved:

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