

FILED

NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

2022 DEC 30 PM 12: 43

SUPERIOR COURT DIVISION

WAKE COUNTY

19 CVS 008664

WAKE CO., C.S.C. S.C.J.

MIKE CAUSEY, COMMISSIONER)
OF INSURANCE OF NORTH)
CAROLINA,)

Petitioner,)

v.)

SOUTHLAND NATIONAL)
INSURANCE CORPORATION,)
SOUTHLAND NATIONAL)
REINSURANCE CORPORATION,)
BANKERS LIFE INSURANCE)
COMPANY, COLORADO BANKERS)
LIFE INSURANCE COMPANY,)
North Carolina Domiciled Insurance)
Companies,)

Respondents.)

ORDER OF LIQUIDATION AGAINST)
BANKERS LIFE INSURANCE)
COMPANY AND COLORADO)
BANKERS LIFE INSURANCE)
COMPANY)

AND)
ORDER FOR INJUNCTIVE RELIEF)

THIS CAUSE came to be heard on the 21st day of November, 2022 before the undersigned Judge Presiding over the Wake County Superior Court, upon the Verified Petition for an Order of Liquidation against Bankers Life Insurance Company (“BLIC”) and Colorado Bankers Life Insurance Company (“CBL”), filed by Mike Causey in his official capacity as Commissioner of Insurance of the State of North Carolina (the “Petitioner”), seeking the entry of an Order of Liquidation and injunctive relief against Bankers Life Insurance Company and Colorado Bankers Life Insurance Company;

Based upon the Petition, the court file, the documents of which the Court took judicial notice as set forth in the Order entered November 21, 2022, the evidence presented at the hearing, and the arguments of counsel, the Court finds:

1. Petitioner is the Commissioner of Insurance of the State of North Carolina and initiated this action against BLIC, CBL, and the other named Respondents in his official capacity pursuant to N.C. Gen. Stat. §§ 58-30-15, 58-30-20, 58-30-100, 58-30-105, and Article 38 of Chapter 1 of the North Carolina General Statutes;

2. The purpose of Article 30 of Chapter 58 of the North Carolina General Statutes is to “protect the interests of policyholders, claimants, creditors, and the public generally . . . through . . . enhanced efficiency and economy of liquidation, through clarification of the law, to minimize legal uncertainty and litigation.” N.C. Gen. Stat. § 58-30-1;

3. Both BLIC and CBL are life, accident, and health insurance companies as defined in Chapter 58 of the General Statutes of North Carolina, are incorporated under the laws of the State of North Carolina, and have their registered home office in Raleigh, NC;

4. On October 18, 2018, the North Carolina Department of Insurance, with Respondents’ consent, placed Respondents into Administrative Supervision for a 120-day period. The purpose of the supervision was to oversee Respondents’ operations while Respondents attempted to lower the level of their investments into entities that

are affiliated with them, as the term “affiliated” is defined in Chapter 58 of the General Statutes;

5. The Administrative Supervision was extended multiple times to provide more time to reduce the level of affiliated investments. However, the level of affiliated investments was not reduced to a level that Petitioner deemed adequate to ensure the safety and soundness of Respondents and their obligations to policyholders;

6. On or about June 27, 2019, this Court entered an Order of Rehabilitation, an Order Appointing Receiver and Order Granting Injunctive Relief (“Rehabilitation Order”) against BLIC and CBL and the remaining above-named Respondents, with the written consent of the Respondents’ Directors and controlling shareholder, and the Court found that the Petition set forth sufficient grounds under N.C. Gen. Stat. § 58-30-75;

7. Under the Rehabilitation Order, the Commissioner, as Rehabilitator, is administering the assets of BLIC, CBL, and the other Respondents in accordance with N.C. Gen. Stat. § 58-30-80, *et seq.*;

8. Also on June 27, 2019, Respondents, Greg Lindberg, and other companies that Lindberg owns entered into a Memorandum of Understanding (“MOU”) and other related agreements that were intended to rehabilitate Respondents. The parties to the MOU agreed that it was a legally binding agreement. As part of these agreements Lindberg and his affiliates received over \$100 million in benefits;

9. By September 2019, Lindberg and his affiliates disavowed the MOU and rehabilitation plan. Lindberg and his affiliates claimed the MOU was merely an agreement to agree and not an enforceable contract;

10. On October 1, 2019, Respondents filed a lawsuit against Lindberg and his affiliates seeking enforcement of the MOU agreement. This Court held a trial without a jury on the matter, and entered judgment in favor of Respondents. Mr. Lindberg and his affiliates appealed that ruling and still have not performed their obligations under the MOU;

11. Pursuant to N.C. Gen. Stat. § 58-30-100, “[t]he Commissioner may petition the Court for an order directing him to liquidate a domestic insurer . . . on the basis . . . that the insurer is insolvent or that the insurer is in such condition that the further transaction of business would be hazardous, financial or otherwise, to its policyholders, its creditors, or the public.” N.C. Gen. Stat. § 58-30-100(2)-(3);

12. An insurance company is insolvent if it “is unable to pay its obligations when they are due, or its admitted assets do not exceed its liabilities plus the greater of (i) any capital and surplus required by law for its organization; or (ii) the total par or stated value of its authorized and issued capital stock.” N.C. Gen. Stat. § 58-30-10(13). Liabilities “includes reserves required by statute, by Department rules, or by specific requirements imposed by the Commissioner upon a subject company at the time of admission or subsequent thereto, except

those reserves that are an allocation of surplus as specified in [N.C. Gen. Stat. §] 58-65-95.” *Id.*;

13. Pursuant to N.C. Gen. Stat. § 58-19-10, an insurer’s investments in affiliates or subsidiaries may not exceed the lesser of ten percent of the insurer’s admitted assets or fifty percent of the insurer’s policyholders’ surplus, provided that these investments will leave the policyholders’ surplus reasonable in relation to the insurer’s outstanding liabilities and adequate to its financial needs;

14. Accordingly, BLIC’s and CBL’s admitted assets as calculated below do not include affiliated investments in excess of this statutory limit;¹

15. Based upon the Rehabilitator’s Quarterly Court Report of BLIC, as of June 30, 2022, BLIC’s admitted assets of \$253,163,012 do not exceed its liabilities of \$354,062,743 plus the value of its capital stock of \$3,000,000, and, therefore, BLIC is insolvent within the meaning of N.C. Gen. Stat. § 58-30-10(13);

16. BLIC is insolvent and is in such condition as to render the continuance of its business hazardous, financially, or otherwise, to its policyholders, its creditors or the public within the meaning of N.C. Gen. Stat. § 58-30-100(2)-(3);

17. Continuation of BLIC’s business would be hazardous, financially

¹ However, as was adduced through testimony at the hearing on the Petition, even if the affiliated investments were treated as admitted assets for purposes of the insolvency calculation, BLIC and CBL still would be insolvent under the meaning of the statute.

or otherwise, to its policyholders, its creditors, or the public;

18. Based upon the Rehabilitator's Quarterly Court Report of CBL, as of June 30, 2022, CBL's admitted assets of \$1,369,052,180 do not exceed its liabilities of \$2,508,953,520 plus the value of its capital stock of \$2,500,000, and, therefore, CBL is insolvent within the meaning of N.C. Gen. Stat. § 58-30-10(13);

19. CBL is insolvent and is in such condition as to render the continuance of its business hazardous, financially, or otherwise, to its policyholders, its creditors or the public within the meaning of N.C. Gen. Stat. § 58-30-100(2)-(3);

20. Continuation of CBL's business would be hazardous, financially or otherwise, to its policyholders, its creditors, or the public;

21. Through the end of October 2022, over \$750 million of policyholder obligations have exited the surrender charge period. By the end of 2023, that number will total over \$2 billion. Accordingly, time is of the essence to return funds to policyholders, many of whom are retirees and expected to have access to these funds;

22. Petitioner is entitled to appointment as Liquidator of BLIC and CBL under the provisions of N.C. Gen. Stat. Chapter 58, Article 30;

23. Upon the entry of an Order of Liquidation, it is in the public interest that the Court enter a preliminary injunction which prohibits the disposition, waste or impairment of the property of BLIC or CBL, the

unauthorized transaction of further business on behalf of BLIC or CBL, requires the transfer of all property of BLIC and CBL to Petitioner, prevents interference with the Petitioner or this proceeding, prohibits the commencement or prosecution of any actions against the Petitioner or BLIC and CBL, and prohibits any party or person from obtaining preferences, judgments, attachments or other liens, or the initiation of any levy against BLIC or CBL or any of their general assets;

24. Each state where BLIC and CBL is or was licensed to engage in the business of insurance has established a life and health insurance guaranty association (“Guaranty Association”) to provide protection to policyholders and beneficiaries of insurance products in the event an insurer, such as BLIC and CBL, is placed into liquidation with a finding of insolvency, subject to certain statutory limits, as provided for in the state legislation creating each such Guaranty Association (referred to herein as “G.A. Enabling Act(s)”). *See, e.g.*, N.C. Stat. §§ 58-62-2, *et seq.* (establishing the North Carolina Life and Health Insurance Guaranty Association);

25. At the request of an applicable Guaranty Association to facilitate the transition to liquidation, the Liquidator shall continue to collect premiums, pay claims, and otherwise administer or arrange for the administration of the BLIC and CBL policies covered by such Guaranty Association as needed, subject to fair and reasonable terms and reconciliation as may be agreed to

by the Liquidator and such Guaranty Association;

26. At the hearing on this Petition, this Court ruled that GBIG Holdings, LLC (“GBIG”), the sole shareholder of BLIC and CBL, did not have a statutory right to object to or contest the Verified Petition. See N.C. Gen. Stat. § 58-30-95. Nevertheless, the Court granted GBIG’s oral motion to intervene in the action. The Court, in its discretion, allowed GBIG to participate in the November 21, 2022 hearing, and present evidence and argument related to the Petition;

27. On November 1, 2022, counsel for GBIG was served with a copy of the Petition. On November 2, 2022, the Court notified counsel for GBIG that it scheduled the hearing on the Petition for November 21, 2022;

28. On November 16, 2022, prior to the hearing and prior to GBIG’s motion to intervene, Respondents provided GBIG with financial and other records relevant to the Petition (“Pre-Hearing Voluntary Production”). GBIG also had access, prior to the hearing and to its motion to intervene, to the status reports that the Rehabilitator files with this Court each quarter, which are publicly available (“Quarterly Reports”);

29. On November 17, 2022, Respondents served Petitioner and GBIG with their Response in support of the Petition, along with Exhibits A through G in support;

30. At the hearing, GBIG, through counsel, cross-examined each

witness that the Parties called and presented testimonial evidence from two witnesses of its own, including a witness proffered as an expert, Charles Lundelius. GBIG entered a number of documentary exhibits into the record. GBIG had reviewed and relied on the Pre-Hearing Voluntary Production and the Quarterly Reports in advance of the hearing, and used those documents in its evidentiary presentation;

31. GBIG's witness proffered as an expert, Mr. Lundelius, also had reviewed and relied upon the Pre-Hearing Voluntary Production and Quarterly Reports and based his opinions, offered under oath, on his review of these documents. The Court specifically finds as credible Mr. Lundelius's assertion that he reviewed the Pre-Hearing Voluntary Production and Quarterly Reports in advance of his testimony;

32. The evidence and arguments presented by GBIG at the November 21, 2022 hearing were properly considered, without regard to the issue of standing or their statutory right to contest the Petition. Notwithstanding the Court's consideration of the evidence presented by GBIG, this Court's findings of fact and conclusions of law as stated herein and on the record at the hearing would not change;

33. GBIG failed to present any evidence that BLIC or CBL are solvent under North Carolina General Statutes. In particular, the witness proffered as an expert, Mr. Lundelius, failed to apply the governing law regarding the

treatment of affiliated investments. His alternative analysis, which would include the alleged fair market value of all of the affiliated investments in the Respondents' admitted assets, is contrary to law and also lacked an adequate factual foundation;

34. Likewise, the testimony of GBIG's second witness, Bob Alban, did not demonstrate that Respondents are solvent. Mr. Alban had provided services to Lindberg and his affiliated companies since 2019 and testified on their behalf in the trial of MOU Action;

35. Mr. Alban presented to the Court, as GBIG's Exhibit 5, correspondence he had delivered to Mike Dinius the Special Deputy Rehabilitator appointed for the Respondents and attached an Indication of Interest ("IOI") from Universal Financial Holdings, Inc. ("UFH") to purchase GBIG Holdings, Inc. The IOI incorporated a document titled Acquisition Term Sheet. UFH was formed on October 31, 2022, just three weeks prior to the hearing on the Petition. Upon execution of the IOI, UFH would receive \$125,000. This was not the first LOI Alban had presented to Dinius either on behalf of himself or other clients. Notably the most recent offer was conditioned upon CBL and BLIC having no investments, either directly or indirectly, in GBIG and the time of closing. If the IOI were to be executed by the parties, Alban believed the transaction would close in six months.

36. The most striking element of UFH's proposal was the language

contained in the Acquisition Term Sheet. The third line of the Acquisition Term Sheet states “*For Discussion Purposes Only.*” More concerning to the Court is the paragraph that followed:

This Summary of proposed terms of acquisition sets forth the principal terms of the proposed acquisition of GBIG Holdings, LLC, and is an expression of intent only and is not a binding agreement commitment to execute the proposed transaction. There is no binding obligation on the part of any party to proceed with the proposed transaction described in the Acquisition Term Sheet unless and until definitive agreements regarding the proposed transaction are signed by the relevant parties and all required internal approvals of each party are secured.

(emphasis in original). This language merely creates an agreement to agree and not an enforceable contract.

37. To the extent the IOI was presented as evidence of the purported fair market value of the insurance companies, the LOI and Mr. Alban’s testimony is not relevant under the statutory definition of insolvency, which is calculated based on the par value of the insurer’s stock, not its fair market value. Moreover, because the numbers contained therein were for “Discussion Purposes Only,” the IOI is at best an agreement to agree and the IOI does not reflect the fair market value of CBL or BLIC;

38. Given the past conduct of Lindberg and his affiliated companies in disavowing the MOU as an agreement to agree as well as their conduct during and after the entry of the Order and Judgment in the MOU Action, the Court has no confidence that even if this IOI were a *bona fide* offer, that GBIG Capital, LLC and/or

GBIG Holdings, LLC would use it for anything other than a means of delaying these proceedings.

39. In sum, the evidence presented at the hearing demonstrated that BLIC and CBL both are insolvent and are in such condition that the further transaction of business would be hazardous to their policyholders, creditors, and the public.

IT IS, THEREFORE, ORDERED:

1. Mike Causey, Commissioner of Insurance of the State of North Carolina, and his successors in office, are hereby appointed as Liquidator of BLIC and CBL, and that the Liquidator is hereby vested with all duties, powers, authority, and obligations as are provided by Chapter 58, Article 30 of the North Carolina General Statutes;

2. This Order of Liquidation shall become effective for all purposes under Chapter 58 of the North Carolina General Statutes (including but not limited to N.C. Gen. Stat. §§ 58-30-105 and 58-30-110) with BLIC and CBL each declared insolvent and placed under this Order of Liquidation, as of the first month-end occurring on or subsequent to ninety (90) days after the later of: (1) the entry of this Order; (2) a decision of the North Carolina Court of Appeals affirming this Order, if further review of that decision is not sought; (3) an order by the North Carolina Supreme Court denying discretionary review of this case; or (4) a decision of the North Carolina Supreme Court affirming the Order;

3. The rehabilitation of BLIC and CBL shall continue with this Court retaining jurisdiction over the rehabilitation of BLIC and CBL until the Order of Liquidation shall become effective; *see* N.C. Gen. Stat. § 58-30-15;

4. The Liquidator is hereby vested with the title to all assets of BLIC and CBL and that the filing or recording of this Order with the Clerk of the Superior Court and the Register of Deeds of the County in which BLIC and CBL's principal office or place of business is located—or, in the case of real estate, with the Register of Deeds of the county where the property is located—shall impart the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with that Register of Deeds, would have imparted;

5. The Liquidator shall take into his possession and control all property, stocks, bonds, securities, bank accounts, savings accounts, monies, accounts receivable, books, papers, records, data bases, printouts and computations, whether stored by microfilm, electronic, optical, magnetic or other means, whether stored in tapes, disks, or other media, and that all other assets of any and all kinds and nature whatsoever belonging to BLIC and CBL, wherever located shall be delivered to the Liquidator;

6. The Liquidator shall conduct BLIC and CBL's business and administer BLIC and CBL's assets and affairs under the general supervision of this Court;

7. The Liquidator is hereby vested with the powers and duties of a

receiver under all other applicable laws of the State of North Carolina;

8. Pursuant to N.C. Gen. Stat. § 58-30-120, the Liquidator is authorized to appoint one or more Special Deputy Liquidators to act for the Liquidator in connection with the delinquency proceedings against BLIC and CBL and such Special Deputy Liquidator(s) are authorized to employ and discharge at the prevailing customary rates such counsel, clerks or assistants as the Liquidator or such Special Deputy Liquidator(s) shall deem to be necessary, or to utilize State employees for said purposes if he has determined that the use of State employees to conduct certain aspects of the liquidation is the most cost effective method of administering the delinquency proceeding and that this action benefits the estate and its creditors; and to further authorize such Liquidator or Special Deputy Liquidator(s) to obtain such bonds, errors and omissions type insurance, or excess liability insurance in addition to any such insurance that may be already provided for employees of the Department of Insurance, as a reasonably prudent person charged with the duties would deem to be appropriate; and that all expenses of taking possession of and administering and conserving BLIC and CBL, its assets and property, and of conducting the delinquency proceedings against BLIC and CBL and otherwise dealing with its business and property, whether incurred by or at the direction of the Rehabilitator or any Special Deputy Rehabilitator or by the Liquidator and any Special Deputy Liquidator, including all such expenses associated with the period during which BLIC and CBL were

in Rehabilitation, shall be paid out of the funds or assets of BLIC and CBL pursuant to N.C. Gen. Stat. § 58-30-120(a)(4) and considered class-one claims under N.C. Gen. Stat. § 58-30-220(1), all in accordance with Article 30 of Chapter 58 of the North Carolina General Statutes;

9. The Liquidator is hereby authorized, empowered and directed to incur such expenses for communication and traveling expenses for himself, his agents or attorneys as may be necessary in the proper administration of his duties as Liquidator and also to incur such other expenses as the Liquidator may deem advisable or necessary in order to properly conduct and perform his duties as Liquidator and that any compensation and expenses paid by the Liquidator be reported to the Court and approved on an interim basis subject to the jurisdiction of the Court to approve the amounts of final compensation and expenses;

10. The Liquidator is authorized to notify state or federal regulators of this action, and to take any action relating to the licenses or certificates of BLIC and CBL as may be required to carry out the Order of Liquidation;

11. The Liquidator is relieved from the notice requirements of N.C. Gen. Stat. § 58-30-125(a)(3), to the extent that they may apply, as BLIC and CBL have no insurance agents presently;

12. Injunctive relief is hereby granted pursuant to N.C. Gen. Stat. §§ 58-30-20 and 58-30-130 to prohibit any person from interfering in any manner with the property or assets of BLIC or CBL or with the Liquidator in the performance

of his duties, and injunctive relief is further granted to enforce the automatic, nondiscretionary statutory prohibition against any person from instituting or prosecuting any suit or other action against the Liquidator, BLIC, CBL, or BLIC's or CBL's property or assets, including counterclaims or crossclaims; to stay all persons, firms and corporations with notice of the Court's Order from the obtaining of preferences, judgments, attachments, garnishments, or liens against BLIC and CBL or their property or assets, or the levying of execution or foreclosure against BLIC or CBL or their property or assets, until further order of the Court; to enjoin and restrain BLIC and CBL, its trustees, officers, directors, agents, employees, or third party administrators, and all other persons from the disposition, waste or impairment of any of BLIC's or CBL's property, assets, or records; to enjoin the transaction of further business unless supervised and approved by the Liquidator or his agents or deputies, until further order of the Court; to order all such persons to transfer to the Liquidator any and all property or assets of BLIC or CBL wheresoever situated, and enjoin and restrain BLIC and CBL, their trustees, officers, agents, servants, employees, third party administrators, directors or attorneys from doing or permitting to be done anything which may allow or suffer the obtainment of preferences, judgments, attachments or other liens, or the initiation of a levy against BLIC and CBL or their property or assets;

13. Pursuant to N.C. Gen. Stat. §§ 58-30-105(b) and 58-30-110, the rights

and liabilities of BLIC's and CBL's creditors, policyholders, shareholders, and all other person shall be fixed as of the date that the Order of Liquidation becomes effective;

14. Any claims filed against BLIC or CBL in the liquidation must be filed within two years of the date that the Order of Liquidation becomes effective;

15. The Liquidator, at the request of an applicable Guaranty Association, shall continue to collect premiums, pay claims, and otherwise administer BLIC and CBL policies covered by such Guaranty Association as needed, subject to fair and reasonable terms and reconciliation as may be agreed to by the Liquidator and such Guaranty Association;

STAY OF PENDING ACTIONS

16. Any and all pending actions against Respondents BLIC or CBL are hereby stayed as of the date of this order becomes effective;

INJUNCTION AGAINST ACTIONS BY CREDITORS

17. All persons, firms and corporations receiving actual notice of the Court's Order are hereby enjoined from obtaining preferences, judgments, attachments, garnishments, or liens against BLIC or CBL, or their assets, or the levying of execution or foreclosure against BLIC or CBL or their assets until further order of the Court;

INJUNCTION AGAINST WASTE, TRANSACTION OF BUSINESS

18. BLIC and CBL, their trustees, officers, directors, agents, employees,

owners, and all other persons are hereby enjoined and restrained from the disposition, waste or impairment of any of BLIC's or CBL's property or the transaction of further business unless supervised and approved by the Liquidator or his agents or deputies until further order of the Court, and all such persons are hereby required to transfer to the Liquidator any and all property of the Respondent wheresoever situated;

INJUNCTION AGAINST OBTAINMENT OF PREFERENCES

19. BLIC and CBL, their trustees, officers, agents, servants, employees, owners, directors and attorneys are hereby enjoined and restrained from doing or permitting to be done anything which may allow or suffer the obtainment of preferences, judgments, attachments or other liens, or the initiation of a levy against BLIC or CBL, without prior permission of this Court;

ACCOUNTING AND REPORTING

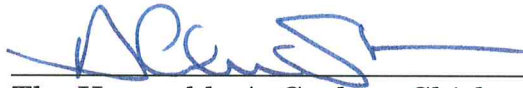
20. Pursuant to N.C. Gen. Stat. § 58-30-105(e), the Liquidator shall make a quarterly report to the Wake County Superior Court, and the Liquidator shall include in the report a statement of receipts and disbursements to date and a balance sheet; this accounting shall be filed in duplicate; one copy shall be filed with the Clerk of Superior Court and one copy shall be submitted to the Judge presiding over the liquidation; the requirement of this Order shall be satisfied by filing the accounting as provided and the Liquidator shall not be required to seek the Court's approval of said accounting; that this accounting may be amended or supplemented in the

Liquidator's discretion;

COMMISSIONER'S BOND

21. The official bond of the Petitioner, the Commissioner of Insurance of the State of North Carolina, shall be sufficient to serve for the faithful performance of his duties and obligations herein imposed.

This 30th day of December, 2022.



The Honorable A. Graham Shirley, II
Superior Court Judge Presiding

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on the persons indicated below by electronic transmission via e-mail, addressed as follows:

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Service is made upon local counsel for all attorneys who have been granted pro hac vice admission, with the same effect as if personally made on a foreign attorney within this state.

This the 30th day of December, 2022.



Kellie Z. Myers
Trial Court Administrator – 10th Judicial District
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