

There is no logical reason why ABC should not be reimbursed for all premium payments that it has loaned to the purchasers who have paid their premiums. As Defendants demonstrated in their Response to Conservator's Motion to Settle Journal Entries (hereafter "Defendants' Response," attached hereto as Exhibit A and incorporated herein by reference), this Court has previously found that it was not the intent of the Conservatorship Order to be punitive, yet that is precisely what the

The Conservator's Application seeks the Court's permission to use premiums paid by purchasers, which were previously advanced by ABC, to pay premiums and premium shortfalls and expenses of the Conservatorship. On two previous occasions this Court has ruled that ABC is entitled to be reimbursed for premiums it advanced regardless of whether the purchasers paid their premiums before or after ABC advanced the funds. It is these very premium payments made by purchasers which the Conservator seeks to use for the purpose of covering future premium shortfalls and Conservatorship expenses. This contention is based, in large part, on the unsupported proposition that post-advance premium payments suddenly become "conservatorship assets," to do with as the Conservator pleases, if received from the purchasers after ABC was forced to loan the funds.

DISCUSSION

Conservator is attempting to do, *i.e.*, keep funds advanced by ABC and, in effect, force the payment of premiums (and expenses) twice. (See Defendants' Response at 5-8). ABC has previously been required to pay well over a \$1,000,000 in premiums since the Conservatorship began. It should not be forced to pay more.

Moreover, it is no secret that the Conservator intentionally engaged in the practice of billing purchasers for premiums just short of when the premiums were due in order to ensure that the payments were received after ABC loaned or advanced the funds for the payment of the premiums. Such behavior should not be countenanced. To make matters worse, the Conservator is, in effect, asking the Court to allow it to use premiums paid by one purchaser to pay the premiums of other purchasers and the Conservatorship expenses -- a practice which the Court and the Conservator have labeled a "Ponzi" scheme.

This Court correctly ruled that ABC should be reimbursed for all premiums advanced whether or not the advanced premiums were previously or subsequently paid by purchasers. At the last hearing regarding this matter, the Court reiterated that it would decide the amount of the reimbursement once D.R. Payne & Associates completes the audit that is now underway. In the meantime, the Court has,

in effect, already entered a money judgment against ABC in excess of \$280,000. The Conservator also plans to tack on attorney fees and Conservator expenses for the month of October, plus, oddly enough, the premiums which the Conservator authorized to be paid out of the account held by ATCO for the months of July and August (approximately \$170,000). This, of course, is in contravention of the Court's previous order that (a) purchasers' payments are to be used only for the payment of their own premiums, and (b) ABC is to be reimbursed for premiums that it has advanced. Additionally, it is contrary to the premium collection notices sent to purchasers that their payments would be used only with respect to the payment of premiums on their policy. Regardless, it is apparent that ABC will be forced to pay at least \$340,000 within the next 20 to 60 days, which should be more than enough to cover the Conservator's fees and expenses for a considerable period of time.

Despite the fact that ABC could possibly be required to pay in excess of \$510,000, the Conservator claims that he has no monies to pay shortfalls or expenses. This contention is not supported by any evidence, and any such determination should be delayed pending completion of the current audit. The Conservator also fails to mention that ABC voluntarily left substantial sums of liquid unencumbered funds when the Conservatorship began in order to pay reasonable Conservatorship

expenses. To date, the Conservator has, in fact, used these funds to pay his expenses and attorney fees, which total in excess of \$300,000. These are the very same expenses and attorney fees that the Court has ordered ABC to pay for the second time. Additionally, ABC voluntarily left approximately \$ 1-3,000,000 of realizable excess policy benefits for the payment of future premiums.

In any event, the Court could solve any such problems by adopting the plan proposed by ABC in response to the Conservator's motion to settle journal entries with two modifications. (*See Defendants' Response at 7-8*). First, ABC is willing to remove the caps on the Reimbursement Account identified in Defendants' Response if, and only if, the Conservatorship is downsized in the manner proposed therein by ABC. (*Id.*; *see also*, Proposed Order attached as Exhibit "A" to Defendants' Response) ABC is confident that two individuals could effectively operate the day-to-day functions of the Conservatorship for less than \$20,000 per month and that a Court-appointed Conservator could supervise their functions for under \$5000 per month. This will allow the Conservatorship, assuming there is no sale of the portfolio, to continue for a period far longer than the current Conservatorship, as presently configured. Second, ABC is willing to pay the expenses of the *reorganized* conservatorship. The expenses and attorney fees of the

Conservatorship over the past ten months are in excess of \$400,000 and the Conservator has done little to preserve these asset or protect the purchasers. The Conservatorship must be reconfigured so that it has a viable chance of surviving and ensuring that the purchasers are protected.

CONCLUSION

For the reasons set forth above, the Conservator's Application for Order Allowing Conservator to Use Premium Reimbursement Proceeds to Pay Conservatorship Expenses should be denied.



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