

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

PEOPLE OF THE STATE OF ILLINOIS, ex rel.)
NATHANIEL S. SHAPO, DIRECTOR OF)
INSURANCE OF THE STATE OF ILLINOIS,)

Plaintiffs,)

v.)

NO: 01 CH 14957

UNITED CAPITOL INSURANCE COMPANY,)
an Illinois Domestic Stock Insurance Company,)

Defendant.)

**ORDER OF LIQUIDATION
WITH A FINDING OF INSOLVENCY**

THIS CAUSE COMING ON TO BE HEARD upon the Verified Complaint For Liquidation, filed herein by the PEOPLE OF THE STATE OF ILLINOIS, on the relation of NATHANIEL S. SHAPO, Director of Insurance of the State of Illinois, seeking an order authorizing and directing the Director to take possession and control of the property, books, records, accounts, assets, business and affairs of UNITED CAPITOL INSURANCE COMPANY, and to liquidate its assets pursuant to the provisions of Article XIII of the Illinois Insurance Code (hereinafter the "Code"), 215 ILCS 5/187, *et seq.* (1998) and, further, to protect the interests of United Capitol Insurance Company's policyholders and creditors, and of the public; the Court having jurisdiction over the parties hereto and the subject matter hereof; the Court having reviewed the pleadings filed herein and having considered arguments of counsel for the Plaintiffs thereon; the Court having entered an order of default against United Capitol Insurance Company; and the Court then being otherwise advised in the premises, and for good cause appearing therefore;

THE COURT FINDS:

1. The Relator, Nathaniel S. Shapo, is the Director of Insurance of the State of Illinois (hereinafter "Director") and, as such, is charged under 215 ILCS 5/401 and 20 ILCS 1405/56 with the rights, powers and duties appertaining to the enforcement and execution of all of the insurance laws of the State of Illinois.

2. The Defendant, United Capitol Insurance Company (hereinafter "United Capitol"), is an insurance company organized under and existing by virtue of the laws of the State of Illinois, having its principal place of business in the City of Atlanta, State of Georgia. Further, that United Capitol is a domestic company as defined by 215 ILCS 5/2(f).

3. Pursuant to Section 190 of the Code, 215 ILCS 5/190, the facts stated in the Verified Complaint and the Exhibit(s) thereto are to be taken as prima facie evidence of the facts therein recited.

4. For the reasons stated on the record herein, the Court finds that sufficient cause exists under Section 188 of the Code, 215 ILCS 5/188, for the entry of an order of liquidation with a finding of insolvency against the Defendant, United Capitol, based upon, without limitation, the fact that the Defendant, United Capitol, is insolvent.

5. The Court has entered an Order of Default against the Defendant, United Capitol, based upon United Capitol's failure to appear and answer the Verified Complaint for Liquidation With a Finding of Insolvency within the time prescribed by law.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED:

A. That sufficient cause exists for the entry of an order for the liquidation of the Defendant, United Capitol, and that this Order of Liquidation be and the same is hereby entered as to and against United Capitol Insurance Company, with a finding of insolvency;

B. That Nathaniel S. Shapo, Director of Insurance of the State of Illinois, and his successors in office, be and the same is hereby appointed as Liquidator of the Defendant, United Capitol (hereinafter "Director" or "Liquidator"), and is hereby authorized and directed to immediately take possession and control of the property, books, records, accounts, business and affairs, and all other assets of United Capitol, and of the premises occupied by United Capitol for the transaction of its business, and to marshal and liquidate the assets, business and affairs of United Capitol pursuant to the provisions of Article XIII of the Code, *supra*; and that the Director, as Liquidator, is hereby authorized to take such further action as the nature of the cause and the interests of United Capitol, its policyholders, creditors and stockholders, or the public may require, subject to the further orders of this Court; further, that the Director is hereby vested, as Liquidator, with title to all property, assets, contracts and rights of action of United Capitol, and that he is hereby authorized to deal with the property, assets, business and affairs of United Capitol, and to sue and defend for United Capitol, or for the benefit of United Capitol's policyholders and creditors, in the courts in his name as the Liquidator of United Capitol, or in the name of United Capitol;

C. That the Defendant, United Capitol, its present and former directors, officers, trustees, agents, managing general agents, third-party administrators, servants, representatives, employees and its direct and indirect parent, subsidiary and affiliated companies, including but not limited to Frontier Insurance Company, United Capitol Holding Company, Frontier Insurance, Group, Inc., Frontier Pacific Insurance Company, Western Indemnity Insurance Company, Olympic Underwriting Managers, Inc., Fischer Underwriting Group and

Environmental & Commercial Insurance Agency, Inc., and all other persons and entities having knowledge of this Order of Liquidation, are hereby ordered and directed to give immediate possession and control to the Liquidator of all property, books, records, accounts, and all other assets of the Defendant, United Capitol, and of any and all premises occupied by the Defendant, United Capitol, for the transaction of its business;

D. That all present and former agents, managing general agents, third-party administrators, fronting carriers, reinsurers, retrocessionaires, accountants, auditors, actuaries and attorneys of the Defendant, United Capitol, including but not limited to, WESTCAP Insurance Services, Claims Control Corporation, Olympic Underwriting Managers, Inc., Financial Management Solutions, Fischer Underwriting Group, Environmental & Commercial Insurance Agency, Inc. and Clarendon National Insurance Company, are hereby ordered and directed to release and deliver to the Liquidator, upon request, copies of all documents, records and files in their possession or under their control concerning or relating to the Defendant, United Capitol, in accordance with 215 ILCS 5/191, and to provide the Liquidator with such information as he may require concerning any and all business and/or professional relationships between them and the Defendant, United Capitol, and concerning any and all activities, projects, jobs and the like undertaken and/or performed by them at the request of United Capitol, or United Capitol's officers, directors, agents, servants, representatives and/or employees, or which United Capitol is, or may be, entitled to as the result of its relationship with such agents, third-party administrators, fronting carriers, reinsurers, retrocessionaires, accountants, auditors, actuaries and/or attorneys;

E. That the Defendant, United Capitol, its directors, officers, agents, servants, representatives and employees, and all other persons and entities having knowledge of this Order of Liquidation, are hereby restrained and enjoined from transacting any business of United Capitol, or dealing with, or disposing of, the property or assets of United Capitol, whether real, personal or mixed, without the express written consent of the Liquidator, or until further order of

this Court; and said persons, companies and entities are further restrained and enjoined from doing, or permitting to be done, any action which might waste or conceal the property or assets of United Capitol;

F. That all banks, brokerage houses, financial institutions, investment advisors, and all other persons, companies or entities having knowledge of this Order of Liquidation, having in their possession accounts or any other assets which are, or may be, the property of the Defendant, United Capitol, are hereby restrained and enjoined from disbursing or disposing of said accounts or assets, without the express written consent of the Liquidator; and all such persons, companies and entities are further enjoined and restrained from disposing of, or destroying, any records pertaining to any business transactions between the Defendant, United Capitol, and all such banks, brokerage houses, financial institutions, investment advisors, and any other persons, companies or entities having done business, or doing business, with the Defendant, United Capitol; and that each such person, company or entity is hereby ordered and directed to immediately turn over and deliver possession and control of any and all such accounts, assets and records to the Liquidator;

G. That all agents, managing general agents, third-party administrators and brokers of the Defendant, United Capitol, and their respective agents, servants, representatives and employees, and all other persons and entities having knowledge of this Order of Liquidation, including but not limited to WESTCAP Insurance Services, Olympic Underwriting Managers, Inc., Financial Management Solutions, Fischer Underwriting Group and Environmental & Commercial Insurance Agency, are hereby restrained and enjoined from returning any premium, earned or unearned, or any other money in their possession, or under their control, collected in connection with policies, contracts, bonds, certificates or treaties of insurance or reinsurance, previously issued, or to be issued, by United Capitol to policyholders or others; and said agents, managing general agents, third-party administrators and brokers, and their respective agents, servants, representatives and employees, and all other persons and entities, are hereby ordered

and directed to immediately turn over all such funds in their possession, or under their control, or to which they may hereafter acquire possession or control, to the Liquidator, in gross and not net of any commissions which may be due thereon, subject to the provisions of 215 ILCS 5/206;

H. That the present and former officers, directors, agents, servants, representatives and employees of the Defendant, United Capitol, and all other persons, companies and entities having knowledge of this Order of Liquidation, are hereby restrained and enjoined from bringing, asserting or further prosecuting any claim, action or proceeding, at law or in equity or otherwise, whether in this State or elsewhere, against the Defendant, United Capitol, or its property or assets, or against the Director as its Liquidator, except insofar as those claims, actions or proceedings arise in or are brought in these liquidation proceedings; that said officers, directors, agents, servants, representatives and employees, and all other persons, companies and entities are hereby restrained and enjoined from obtaining, asserting or enforcing preferences, judgments, attachments or other like liens or encumbrances, including common law retaining liens, or the making of any levy against the Defendant, United Capitol, or its property and assets while in the possession and control of the Liquidator; and that said officers, directors, agents, servants, representatives and employees, and all other persons, companies and entities are hereby restrained and enjoined from interfering, in any way, with the Liquidator's conduct of the liquidation of United Capitol; and from interfering, in any way, with the Liquidator in his right, title and interest to, and possession and control of, the property, business, books, records, accounts, premises and all other assets of the Defendant, United Capitol, until further order of this Court;

I. That the Director, as Liquidator, is hereby vested with the rights, title and interest in all funds recoverable under treaties, contracts and agreements of reinsurance heretofore entered into by or on behalf of United Capitol as the ceding insurer, and that all reinsurance companies involved with United Capitol are hereby restrained and enjoined from making any

settlements with any claimant or policyholder of United Capitol, or any other person, other than the Director as Liquidator, except with the written consent of the Director;

J. That all persons, companies and entities, including policyholders of United Capitol, and all persons asserting claims against such policyholders, are hereby restrained and enjoined from instituting or pursuing any action or proceeding in any court or before any administrative agency, including boards and commissions administering worker's compensation or occupational diseases or similar laws of the State of Illinois, or of any other state, or of the United States, which seek in any way, directly or indirectly, to contest or interfere with the Director's exclusive right, title and interest to funds recoverable under treaties and agreements of reinsurance heretofore entered into by or on behalf of United Capitol as the ceding insurer;

K. That all contracts, treaties and agreements of reinsurance wherein United Capitol was, or is, the assuming or retrocessional reinsurer are hereby canceled on a "cut off" basis, effective upon the date of the entry of this Order of Liquidation; and further, that all other treaties, contracts and agreements of reinsurance, wherein United Capitol is the ceding company, shall remain in full force and effect pending a determination and recommendation by the Liquidator as to when, and upon what terms, cancellation is appropriate;

L. That the rights and liabilities of United Capitol, and of its policyholders, creditors and stockholders, and of all other persons interested in United Capitol's property or assets are hereby fixed as of the date of the entry of this Order of Liquidation, in accordance with 215 ILCS 5/194, except as provided in Paragraph (M) herein, or as may otherwise be provided by further order of this Court;

M. That all direct policies, bonds and/or certificates of insurance heretofore issued by United Capitol are hereby canceled upon the following terms:

1. All direct policies, bonds and/or certificates of insurance which may give rise to "covered claims" of the Illinois Insurance Guaranty Fund, as defined in Sections 534.3 and 537.2 of the Code, 215 ILCS 5/534.3 and 5/537.2, or which may give rise to "covered claims" of similar organizations in any other states, as defined by similar statutes in such other states, shall be cancelled on the earliest of:
 - (a) At 12.01 a.m., local time of the insured, policyholder, bondholder and/or certificate holder of any such direct policy, bond and/or certificate of insurance, thirty-one (31) days after the date of the entry of this Order of Liquidation; or
 - (b) Upon the expiration date of any such direct policy, bond and/or certificate of insurance, if the expiration date is less than thirty-one (31) days after the date of the entry of this Order of Liquidation; or
 - (c) Upon the date the insured, policyholder, bondholder and/or certificate holder of any such direct policy, bond and/or certificate of insurance replaces the direct policy, bond and/or certificate of insurance, or on request effects cancellation thereof, if the insured, policyholder, bondholder and/or certificate holder does so within thirty-one (31) days after the date of the entry of this Order of Liquidation.
2. All other direct policies, bonds and/or certificates of insurance issued by United Capitol are hereby canceled effective upon the date of the entry of this Order of Liquidation.

N. That the obligation of United Capitol, if any, to defend or continue the defense of any claim or suit under a liability insurance policy is hereby terminated, effective upon the date of the entry of this Order of Liquidation, in accordance with Section 209(5) of the Code, 215 ILCS 5/209(5);

O. That this Order of Liquidation With a Finding of Insolvency is hereby deemed a final order within the meaning of Illinois Supreme Court Rule 307(a)(5), and that there be no just reason for delaying enforcement or appeal hereof;

P. That the Director, as Liquidator, is hereby directed and authorized to wind down and terminate United Capitol's business and affairs, and to make the continued expenditure of such wages, rents and expenses as he may deem necessary and proper for administration of the liquidation of United Capitol;

Q. That the Director, as Liquidator, is hereby directed to make periodic reports to this Court regarding the status of United Capitol while in liquidation, and the Director, as Liquidator, is further directed to file with this Court, for its consideration, periodic reports of the Liquidator's receipts and disbursements of United Capitol, in accordance with Section 202 of the Code, 215 ILCS 5/202;

R. That the Director, as Liquidator, is hereby authorized to pay from the assets of the Defendant, United Capitol, those expenses incurred during the course of the liquidation of United Capitol, including but not limited to, attorneys' fees, accountants' fees and consultants' fees, as administrative expenses, pursuant to and in a manner consistent with the provisions of Section 202 of the Code, *Id.*;

S. That the Director, as Liquidator, is hereby authorized to sell, at a reasonable price, any real or personal property of United Capitol having a market value of the amount of Twenty Five Thousand Dollars (\$25,000.00), or less, without the prior approval of this Court; and the Director, as Liquidator, is hereby authorized to abandon or dispose of any items of personal property of United Capitol having no sale value whatsoever, without the prior approval of this Court; and that any such sale of the real or personal property of United Capitol shall be reported by the Liquidator to this Court in his periodic reports of the receipts and disbursements of United Capitol;

T. That all costs of these proceedings are hereby taxed and assessed against the Defendant, United Capitol;

U. That the caption in this cause and all pleadings filed in this matter shall hereafter read:

**“IN THE MATTER OF THE LIQUIDATION
OF UNITED CAPITOL INSURANCE COMPANY”**

V. That the Order of Conservation, entered in this cause as to and against United Capitol on September 12, 2001, and the conservation proceedings arising therefrom, are hereby terminated effective upon the entry of this Order of Liquidation.

W. That this Court shall retain jurisdiction in this cause for the purpose of granting such other and further relief as the nature of the cause and the interests of the Defendant, United Capitol, its policyholders, creditors and stockholders, or of the public, may require; and/or as this Court may deem proper in the premises.

James E. Ryan
Attorney General of Illinois
Attorney for the PEOPLE OF
THE STATE OF ILLINOIS

David W. Van de Burgt
Assistant Attorney General
100 West Randolph Street
Twelfth Floor
Chicago, Illinois 60601
(312) 814-3599
Attorney Code # 99000

OF COUNSEL:
Cathleen Travis
D. Daniel Barr
Dale A. Coonrod
Counsel to the Receiver
222 Merchandise Mart Plaza, Suite 1450
Chicago, Illinois 60654
(312) 836-9500
Attorney Code # 16819

