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JUL 14 2003
Jude Del Prete
Deputy Clerk of Superior Court
7-14-2003

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION-MERCER COUNTY
DOCKET NO. MER-C-107-02

Plaintiff.

v.

Civil Action

ORDER OF LIQUIDATION

Defendant.

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proceedings; (b) directing the Commissioner to liquidate MasterCare; (c) permanently enjoining all persons and entities from pursuing litigation against MasterCare or from interfering with the Commissioner's efforts to liquidate MasterCare; (d) halting all further payment of claims, except for the payment of worker's compensation claims, as determined by the Commissioner, until further order of the Court; (e) providing that all claims must be asserted against MasterCare by the filing bar date specified in Paragraph 20 (A) of this Order, in the form established by the Commissioner, or such claims will be forever barred; (f) providing that policyholders who do not know, or have reason to know, of the existence of actual or potential claims against them shall nonetheless submit a claim against MasterCare by the filing bar date specified in Paragraph 20 (A) of this Order in order to preserve their right to assert actual or potential claims against MasterCare in the future; (g) establishing procedures governing the payment of claims against MasterCare; and (h) granting such other and further relief as this Court may deem just and proper, with proper notice having been given to all interested parties, and the Court having considered the Commissioner's application, the Court hereby finds that:

1. MasterCare is an insurance company domiciled in the State of New Jersey governed by the provisions of Title 17 of the Statutes of New Jersey, which was placed in rehabilitation pursuant

to N.J.S.A. 17:30C-1 to 31., by this Court's September 10, 2002, Consent Order of Rehabilitation of a Property/Casualty Insurance Company ("Order of Rehabilitation").

2. This Court has general jurisdiction, pursuant to N.J.S.A. 17:30C-1 et seq., over this proceeding.

3. The written and published notice of the Petition for Liquidation to interested persons evidenced by the Affidavit and Notice filed with the Court constitutes the best notice practicable under the circumstances and meets the requirements of due process concerning such notice.

4. MasterCare is insolvent. Further efforts to rehabilitate MasterCare will be useless and will substantially increase the risk of loss to creditors, policyholders, and to the general public.

5. Sufficient grounds exist under N.J.S.A. 17:30C-7b and N.J.S.A. 17:30C-8 for the entry of an Order of Liquidation, and such an Order of Liquidation should be entered pursuant to N.J.S.A. 17:30C-9.

It is, therefore, on this 14th day of JULY 2003;

ORDERED as follows:

1. The application of the Commissioner to liquidate MasterCare is hereby granted.

2. The rehabilitation phase of the within delinquency proceeding as set forth in the Order of Rehabilitation is hereby terminated.

3. Holly C. Bakke, Commissioner of the Department of Banking and Insurance, and her successors in office, is hereby appointed Liquidator of MasterCare and is vested, in addition to the powers set forth herein, with all the powers and authority expressed or implied under the provisions of N.J.S.A. 17:30C-1 et seq. The Liquidator may do all of the acts necessary and appropriate for the accomplishment of the liquidation of MasterCare.

4. The Liquidator may appoint a person to serve as Deputy Liquidator to assist her in accomplishing the directives of this Order. The Deputy Liquidator shall, subject to the approval of the Liquidator, be entitled to exercise all of the above powers and authority vested in the Liquidator pursuant to this Order and applicable law, and shall serve at the pleasure of the Liquidator. Compensation of the Deputy Liquidator shall be set by the Liquidator, and paid out of the funds and assets of MasterCare. The Deputy Liquidator shall have no personal liability for his/her acts or omissions in connection with his/her duties as Deputy Liquidator provided that such acts or omissions are undertaken or committed in good faith and without willful misconduct, gross negligence or criminal intent. The Deputy Liquidator shall not be deemed to be an employee of the State of New Jersey and thus, shall not be subject to the provisions of the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 to 12-3. All expenses and costs incurred by the Deputy Liquidator in connection with lawsuits against him/her in

his/her personal capacity, arising from his/her duties and acts as Deputy Liquidator of MasterCare, shall, subject to the prior written approval of the Liquidator and the Court, be paid out of the funds and assets of MasterCare provided that such lawsuits are not the result of any bad faith, willful misconduct, gross negligence or criminal actions on the part of the Deputy Liquidator.

5. The Liquidator is hereby vested with title to all assets, contracts, causes of action, books, records, bank accounts, certificates of deposits, funds, securities, or other funds and all real or personal property of any nature of MasterCare including furniture, fixtures and office supplies, wherever located, including such property of MasterCare which may be discovered hereafter, and is hereby directed to take immediate and exclusive possession and control of same. The filing or recording of this Order with the Clerk of this Court and with the recorder of deeds of the jurisdiction in which MasterCare's corporate administrative offices are located, or in the case of real estate, with the recorder of deeds of the jurisdictions where the properties are located, shall impart the same notice as would be imparted by a deed, bill of sale, or other evidence of title filed or recorded. Except as otherwise indicated elsewhere in this Order, and upon notice provided by the Liquidator, all agents and brokers and all other persons or entities holding funds, assets or property of, or

on behalf of MasterCare, shall forthwith file an accounting of those funds, assets or property with the Liquidator and shall, within 10 days of the entry of this Order, turn said funds, assets or property over to the Liquidator.

6. Until further order of this Court, no obligation of MasterCare nor any claim of any nature shall be paid, nor distribution of MasterCare's assets made, except as, in the discretion of the Liquidator or her designee, may be necessary for the administration of the estate of MasterCare. The Liquidator shall use good faith efforts to give notice by first-class mail to all entities or persons which or who may have claims against MasterCare, contingent or otherwise, as disclosed by its books and records, and advising claimants to file with the Liquidator their claims together with proper proofs thereof on or before the filing bar date specified in Paragraph 20 (A) of this Order. The Liquidator shall also cause a notice to be published in a newspaper of general circulation where MasterCare has its principal place of business, as well as in the appropriate edition of The Wall Street Journal, The Newark Star Ledger, the New Jersey Law Journal, and The Courier Post, (a) specifying the last day for the filing of claims; (b) advising all persons of the procedure by which all persons may present their claims to the Liquidator; (c) advising all persons of the address to which they may send their claim; and (d) advising all such persons of their right to present their claim

or claims to the Liquidator. Any and all persons, firms or corporations having or claiming to have any accounts, debts, claims or demands against MasterCare, contingent or otherwise, or claiming any right, title or interest in any funds or property in the possession of the Liquidator are required to file with the Liquidator at the location designated in the above-described notices, on or before the date specified by the Liquidator as the last date upon which to file a claim, a properly completed proof of claim or be thereafter barred as claimants against any assets in the possession of the Liquidator, unless a late filing is permitted under N.J.S.A. 17:30C-30. No person or entity shall be eligible to participate in any distribution of the assets of MasterCare unless such claims are filed or presented in accordance with and within the time limit and procedures established by the Liquidator, subject to the provisions for the late filing of claims at N.J.S.A. 17:30C-30.

7. All persons, corporations, partnerships, and all other entities, wherever located, are hereby permanently enjoined and restrained from interfering in any manner with the Liquidator's possession, title and rights to the assets and property of MasterCare, and from interfering in any manner with the conduct of the liquidation of MasterCare. Those persons, corporations, partnerships and all other entities are hereby enjoined and restrained from wasting, transferring, selling, concealing,

destroying, disbursing, disposing of, or assigning any assets, contracts, causes of action, funds, or other property of any nature of MasterCare.

8. The Liquidator may change to her own name the name of any of MasterCare's accounts, funds or other property or assets held with any bank, savings and loan associations or other financial institution, wherever located, and may withdraw such funds, accounts, and other assets from such institutions or take any lesser action necessary for the proper conduct of the litigation.

9. (A) All secured creditors or parties, lienholders, collateral holders or other persons claiming secured, priority or preferred interests in any property or assets of MasterCare, including any governmental entity, are hereby permanently enjoined from taking any steps whatsoever to transfer, sell, encumber, attach, dispose of, or exercise purported rights in, or against, any property or assets of Mastercare.

(B) Notwithstanding paragraph 9(A) above, the parties to the trust fund established pursuant to an agreement dated January 1, 1998, between MasterCare and General Reinsurance Corporation ("General Re"), and First Union National Bank, as trustee, hereby acknowledge that amounts owed under the reinsurance agreement underlying the trust agreement, and the trust funds, are subject to an accounting reconciliation and that neither party, including the Liquidator, will seek to withdraw, transfer, sell,

encumber, attach or dispose of the trusts funds pending mutual, written agreement to the accounting reconciliation. In the event that the Liquidator and General Re cannot mutually agree on the reconciliation of the balances involving the trust fund and the reinsurance agreement underlying the trust fund, the Liquidator and General Re agree to submit the dispute to arbitration pursuant to the underlying reinsurance agreement, and agree to be bound by the decision of the arbitration panel. General Re further agrees not to withdraw, transfer, sell, encumber, attach or dispose of any funds from the trust fund pending either a written agreement between the parties or an award issued by a duly appointed arbitration panel, following which General Re may draw funds from the trust fund consistent with the terms of the parties' agreement or an award of the arbitration panel.

10. All officers, directors, trustees, shareholders, policyholders, agents, and employees of MasterCare and all other persons or entities of any nature, including but not limited to claimants, reinsurers, plaintiffs, petitioners, physicians, hospitals, or other medical or health care providers and any governmental agencies having claims of any nature against MasterCare, including crossclaims, counterclaims and third party claims, are hereby enjoined and restrained from:

(A) conducting any portion or phase of the business of MasterCare unless so authorized by the Liquidator or Deputy Liquidator;

(B) bringing, maintaining or further prosecuting any action at law, suit in equity, arbitration, special, or other proceeding against MasterCare, its estate in liquidation or against the Liquidator and her successors in office, as Liquidator, thereof, or against the Deputy Liquidator appointed pursuant to paragraph 4 above;

(C) making or executing any levy upon the property or estate of MasterCare;

(D) instituting, maintaining or further presenting any suit at law or equity or any collection activity, or any other proceeding of any nature against any member, policyholder, or insured of MasterCare resulting from MasterCare's insolvency or the failure of MasterCare to pay any claim or to meet any of its contractual obligations due to its insolvency;

(E) interfering in any way with the Liquidator, or any of her successors in office, in her possession of, or title to, the property and assets of MasterCare, or in the discharge of her duties as Liquidator thereof, pursuant to this Order. All persons or entities of any nature, other than the Liquidator, are hereby restrained from commencing, maintaining or further prosecuting any direct or indirect actions against any reinsurer of MasterCare for

proceeds of reinsurance policies, treaties or other agreements with MasterCare.

11. No bank, savings and loan association or other financial institution shall, without first obtaining permission of this Court, exercise any form of offset, alleged offset, lien against any fund held by or on behalf of MasterCare or refuse to transfer funds or assets of MasterCare to the Liquidator's control, unless subject to N.J.S.A. 17:30C-27.

12. The amounts recoverable by the Liquidator from any reinsurer of MasterCare shall not be reduced as a result of this delinquency proceeding, or by reason of any partial payment or distribution on a reinsured policy, contract or claim. Unless either the insurance contract or an applicable statute provides to the contrary, payment made directly to an insured or other creditor shall not diminish the reinsurer's obligation to MasterCare.

13. (A) Any agent, broker, premium finance company, or any other person, other than the insured, responsible for the payment of a premium, shall be obligated to pay to the Liquidator any unpaid premiums, whether earned or unearned, as shown on the records of MasterCare as of the date of entry of this Order. The Liquidator shall also have the right to recover from such person any part of an unearned premium that represents a commission to such person;

(B) All policyholders of MasterCare shall be obligated to pay any unpaid earned premium due to MasterCare at any time, as shown on the records of MasterCare.

14. MasterCare, its officers, directors, policyholders, agents and employees, and all other persons or entities of any nature, having any property or records belonging to MasterCare, or pertaining to the business of MasterCare, including data processing information and records of any kind, are hereby directed to assign, transfer and deliver to the Liquidator all of such property in whatever name the same may be, and any persons, firms or corporations having any books, papers or records relating to the business of MasterCare shall preserve the same and submit these to the Liquidator for examination at all reasonable times.

15. Except as otherwise provided in this Order, rights and liabilities of MasterCare, and of its creditors, policyholders, shareholders and all other persons interested in the estate, shall be, and hereby are, fixed as of the date of entry of this Order.

16. All insurance policies, bonds or other contracts of insurance issued by MasterCare in effect on the date of entry of this Order, if any, shall automatically terminate upon the earlier of:

(A) the expiration of a period of 30 days from the date of entry of this Order;

(B) the expiration of the policy coverage pursuant to the terms of the policy or;

(C) the date when the insured has replaced the insurance coverage with insurance of another insurer or otherwise terminated the policy.

17. The termination of policies as set forth in paragraph 16 above shall supersede, and control over, any other contractual or statutory provisions pertaining to the renewal or cancellation of policies.

18. The Liquidator shall have the power:

(A) to liquidate all property and assets of MasterCare, wherever located, and to wind up the affairs and business of MasterCare under the general supervision of the Court;

(B) to honor, as expenses of administration, all expenses heretofore incurred by the Commissioner as Rehabilitator, or by her designees and appointees, which currently remain unpaid;

(C) to pay from the funds or assets of MasterCare or from such other funds that may become available to her, all expenses of marshaling, taking possession of, conserving, conducting, liquidating, disposing of or otherwise dealing with the business and property of MasterCare;

(D) to hold hearings for the purpose of determining and evaluating claims submitted, to administer oaths, examine any person under oath and compel any person to subscribe to their

testimony after it has been correctly reduced to writing, and in connection therewith to require the production of any books, papers, records or other documents which she deems relevant to the inquiry;

(E) to collect all debts and monies due and claims belonging to MasterCare, wherever located, where economically feasible, and for this purpose,

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

(ii) to do such other acts as are necessary or expedient to marshal, collect, conserve or protect MasterCare's assets or property, including the power to sell, compound, compromise or assign debts for purposes of collection upon such terms and conditions as she deems appropriate, and the power to initiate and maintain actions at law or equity or any other type of action or proceeding of any nature, in this and other jurisdictions,

(iii) to pursue any creditor's remedies available to enforce her claims;

(F) to conduct public and private sales of the assets and property of MasterCare, including any real property;

(G) to acquire, invest, deposit, hypothecate, encumber, lease, improve, sell, transfer, abandon, or otherwise dispose of or

deal with any asset or property of MasterCare, and to sell, reinvest, trade or otherwise dispose of any securities or bonds presently held by MasterCare, upon such terms and conditions as she deems to be fair and reasonable, irrespective of the value at which such property was last carried on the books of MasterCare. She shall also have the power to execute, acknowledge and deliver any and all deeds, assignments, releases and other instruments necessary or proper to effectuate any sale or property or other transaction in connection with the liquidation;

(H) to borrow money on the pledge of assets of MasterCare, with or without security, and to execute and deliver all documents necessary to that transaction for the purpose of facilitating the liquidation. Neither the Commissioner nor her designees or appointees shall be held liable in their official or personal capacities for any loans made for such purposes;

(I) to enter into such contracts as are necessary to carry out this Order, and to affirm or disavow any contracts to which MasterCare is a party;

(J) to institute and to prosecute, in the name of MasterCare or in her own name, any and all suits and other legal proceedings, to defend suits to which MasterCare or the Liquidator is a party, in this State or elsewhere, commenced prior to or subsequent to this Order, to abandon the prosecution or defense of suits, legal proceedings and claims which she deems inappropriate

to pursue further and to compromise suits, legal proceedings or claims on such terms and conditions as she deems appropriate;

(K) to prosecute in her discretion any action which may exist on behalf of the creditors, policyholders or shareholders of MasterCare against any officer or director of MasterCare, or any other person;

(L) to remove any or all records and other property of MasterCare to the offices of the Liquidator or to such other place as may be convenient for the purposes of efficient and orderly execution of the liquidation; and to dispose of or destroy in the usual and ordinary course, such of those records and property as the Liquidator may deem or determine to be unnecessary for the administration of the estate of MasterCare in receivership, provided that no records shall be destroyed except as set forth in N.J.S.A. 17:3A-1 et seq. Security Funds, Guaranty associations and ancillary receivers shall have such reasonable access to the records of MasterCare as may be necessary for them to carry out their statutory obligations:

(M) to terminate the employment of any employee of MasterCare that she determines is not essential to the administration of the estate of MasterCare in liquidation;

(N) to retain such employees of MasterCare, and to hire additional employees and such consultants or experts that she deems essential to the administration of the estate of MasterCare in

liquidation, and make reasonable and necessary compensation arrangements to ensure the continued availability of such employee through the liquidation period, subject to N.J.S.A. 17:30C-17;

(O) to file any necessary documents for recording in the office of any recorder of deeds or record office in this state or elsewhere where property of MasterCare is located;

(P) to exercise and enforce all the rights, remedies and powers of any creditor, shareholder or policyholder, including any power that may be given by law or equity to avoid any transfer or lien;

(Q) to intervene in any proceeding wherever instituted that might lead to the appointment of a receiver or trustee for the MasterCare Insurance Company and to act as the receiver or trustee whenever the appointment is offered;

(R) to enter into agreements with any ancillary receiver or Insurance Commissioner of any other state, the Stock Workers' Compensation Security Fund created by N.J.S.A. 34:15-105, or any similar organization of another state, relating to the liquidation, conservation or dissolution of MasterCare as she may deem to be necessary or appropriate, subject to the approval of this Court;

(S) to perform such further and additional acts as she may deem necessary or appropriate for the accomplishment of or in aid of the purpose of liquidation, it being the intention of this

Order that the aforestated enumeration of powers shall not be construed as a limitation upon the Liquidator or Deputy Liquidator.

19. The Liquidator shall give or cause to be given notice of the entry of this Order as soon as possible:

(A) by first class mail to the Insurance Commissioner of each jurisdiction in which MasterCare is, or was heretofore, doing business, either on an admitted or surplus lines basis;

(B) by first class mail to any security fund or guaranty association which is or may become obligated as a result of MasterCare's liquidation;

(C) by first class mail to all persons or entities having a claim against MasterCare, at their last known address, as indicated by the records of MasterCare;

(D) by publication in The Wall Street Journal, Newark Star Ledger, the New Jersey Law Journal, The Courier Post as well as such other newspapers circulated in such locations that the Liquidator may deem appropriate. Such publication shall commence within three (3) weeks of the execution of this Order and shall be repeated once a week thereafter for two successive weeks, except for The Wall Street Journal, which publication shall appear once in the appropriate edition.

20. (A) The notice served under paragraph 20 shall require that any person seeking to receive distributions in liquidation as a claimant file a proof of claim with the Liquidator or her

designee, together with proper proof of loss, in such manner and form as the Liquidator or her designee may in her discretion require, at a place specified in such notice, no later than October 1, 2003. The Liquidator's notice may contain such other rules, regulations and information as she may deem necessary for the purpose of this proceeding in fixing and determining all lawful claims and demands against MasterCare;

(B) The Liquidator shall in her notice specify that the reasonable costs or expenses incurred by the insured in defending a claim which would, prior to entry of this Order, have been assumed by MasterCare, shall be part of and included in the amount of the claim, up to limits of the policy.

(C) The Liquidator shall in her notice require that such claimants make and submit any actual or potential claims which they may have with or against MasterCare, including both known claims and circumstances within the knowledge of such claimant which can reasonably be expected to give rise to claims;

(D) The Liquidator shall in her notice require that policyholders who do not know, or have reason to know, of the existence of actual or potential claims against them nonetheless submit a claim in accordance with subparagraph (A) hereof, in order to preserve their right to assert actual or potential claims against MasterCare in the future. In the case of such policyholders, the proof of loss requirement shall be deemed

satisfied if the policyholder states by way of proof that he/she intends to reserve his/her rights to assert all future claims against MasterCare;

(E) The Liquidator shall notify all policyholders of in-force MasterCare insurance policies that their insurance policies shall be cancelled within 30 days of the date of this Order, pursuant to paragraph 16.

(F) The Liquidator may, in her discretion, alter the notification and filing requirements of paragraph 20(A) to (B) hereof, by agreements made with ancillary receivers or with insurance commissioners of other states, the Stock Workers' Compensation Security Fund, or with similar organizations of other states;

(G) Guaranty associations, for the purpose of procuring reimbursement from the Liquidator, shall file an initial single blanket proof of claim setting forth the aggregate amount of underlying claims paid, or to be paid, by said guaranty associations. Said blanket proof of claims shall be supplemented quarterly to set forth administrative expenses incurred, indemnity paid, including the details of each claims payment and such other information as may be required by the Liquidator;

21. If notice is given in accordance with paragraphs 20 and 21 above, the distribution of the assets of MasterCare shall be

conclusive with respect to all policyholders and claimants, whether or not they receive actual notice.

22. No claim under a policy of insurance shall be allowed for an amount in excess of the applicable policy limits. If several claims founded upon one policy are filed, and the aggregate allowed amount of the claims to which the same limit of liability in the policy is applicable exceeds that limit, each claim as allowed shall be reduced in the same proportion so that the total equals the policy limit.

23. (A) No claim need be considered or allowed if it does not contain all the information reasonably required by the Liquidator;

(B) No judgment or order against an insured of MasterCare entered after the date of entry of the within Order and no judgment or order against an insured of MasterCare entered at any time by default or by collusion need be considered as evidence of liability or of the amount of damages payable under said judgment or order.

24. For purposes of paragraphs 23 and 24 hereof, the word "claim" is defined to include claims that are not "covered claims" as that term is defined in applicable guaranty association statutes.

25. The Liquidator may compound, compromise or in any other manner negotiate the amount for which claims will be recommended to this Court except where the Liquidator is required by law to accept

claims by any person or organization, including any guaranty association.

26. (A) When all assets justifying the expense of collection and distribution have been collected and distributed under this Order, the Liquidator shall apply to the Court for discharge. The Court may grant the discharge and make any other orders, including an order to transfer any remaining assets that are uneconomic to distribute, as may be deemed appropriate;

(B) Any other person may apply to the Court at any time for an Order under paragraph 27(A) hereof. If the application is denied, the applicant shall pay the costs and expenses of the Liquidator in resisting the application, including a reasonable attorney's fee.

27. All unclaimed funds subject to distribution remaining in the Liquidator's hands when she is ready to apply to the Court for discharge, including those amounts distributable to any creditor, shareholder, member or other person who is unknown or cannot be found, shall be deposited with the State Treasurer, and shall be paid without interest to the person entitled thereto or his/her legal representative upon proof satisfactory to the State Treasurer of his/her right thereto. Any amount on deposit not claimed within 3 years from the discharge of the Liquidator shall be deemed to have been abandoned and shall be escheated to the general fund of the State of New Jersey pursuant to N.J.S.A. 46:30B-7.

28. All further papers filed in these proceedings shall bear the caption and be entitled:

IN THE MATTER OF THE)
LIQUIDATION OF MASTERCARE)
INSURANCE COMPANY.)

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION-MERCER COUNTY
GENERAL EQUITY PART
DOCKET NO. MER-C-107-2

29. 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.

30. The Commissioner as Liquidator may at any time make further application for such additional and different relief as she sees fit.

31. This Court shall retain jurisdiction for all purposes necessary to effectuate and enforce this Order.


Neil H. Shuster, J&C

*The reasons for this order have been
set forth on the record. nss*

The reasons for this order
have been set forth on the
record, by the court.

7-14-03