

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2016CP4000034

Raymond G Farmer

Consumers Choice Health Insurance Company

SC Department of Insurance

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : Plaintiff Defendant or Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award: Other _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT OF THE RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment (the Court: _____)

ORDER INFORMATION

This order ends does not end the case.
Additional Information for the Clerk : _____

2016 MAR 28 AM 11:54
FILED
RICHLAND COUNTY

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order: _____

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge _____ Judge Code 2118 Date _____

For Clerk of Court Office Use Only

This judgment was entered on the 29 day of March, 2016 and a copy mailed first class or placed in the appropriate attorney's box on this 29 day of March, 2016 to attorneys of record or to parties (when appearing pro se) as follows:

Geoffrey Ross Bonham

ATTORNEY(S) FOR THE PLAINTIFF(S) _____

ATTORNEY(S) FOR THE DEFENDANT(S) _____

Court Reporter _____

Clerk of Court Jeanette W. McVie

STATE OF SOUTH CAROLINA
RICHLAND COUNTY

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Raymond G. Farmer, as Director of the South
Carolina Department of Insurance.

Civil Action No. 2016-CP-40-00034

Petitioner,

**ORDER COMMENCING
LIQUIDATION PROCEEDING
& GRANTING
AN INJUNCTION &
AUTOMATIC STAY OF
PROCEEDINGS**

vs.

Consumers' Choice Health Insurance
Company,

Respondent.

RICHLAND COUNTY
FILED

2016 MAR 28 AM 11:52

This matter comes before me pursuant to the South Carolina Insurers Supervision, Rehabilitation and Liquidation Act, S.C. Code Ann. §§ 38-27-10 *et seq.* Petitioner, Raymond G. Farmer, as Director of the South Carolina Department of Insurance, by and through counsel, has petitioned the Court for an Order appointing him as Liquidator of Respondent, Consumers' Choice Health Insurance Company, in Rehabilitation. Petitioner is the Receiver for Respondent by previous order of this Court entered January 8, 2016. The instant Petition was filed and served on Respondent on February 17, 2016. Respondent has reasonable notice of the Petition pursuant to Section 38-27-60 of the Code of Laws of South Carolina 1976, as amended; and, Respondent's Board of Directors has indicated through counsel that it has no objection to the Petition being granted and waives hearing on this matter.

The Court, having reviewed the filings of record and otherwise being fully informed in the premises, finds:

1. This Court is the proper venue for this proceeding pursuant to S.C. Code Ann. §§

38-27-60(f), -350(a) & -360 (2015).

2. Petitioner is the duly appointed Director of the State of South Carolina Department of Insurance with such powers, duties and responsibilities as are prescribed under the insurance laws of this State to the Director or his designee for receivership matters, and is specifically authorized to file a petition for an order authorizing him to liquidate an insurer domiciled in this State pursuant to S.C. Code Ann. §§ 38-27-350(a), -360 & 38-90-180(A) (2015).

3. The Department has regulatory jurisdiction over the Respondent pursuant to, *inter alia*, Chapters 3, 25 and 71 of Title 38 of the South Carolina Code of Laws 1976, as amended.

4. Respondent is a South Carolina Consumer Operated and Oriented Plan (CO-OP) that was placed into rehabilitation by Order of this Court on or about January 8, 2016. Said Order also provides that upon petition by the Receiver stating that further efforts to rehabilitate Respondent would substantially increase the risk of loss to creditors, policyholders or the public, or would be futile, this Court will consider entry of an Order of Liquidation of Respondent in accordance with S.C. Code Ann. § 38-27-350(a) (2015) and such petition shall have the same effect as a petition filed under S.C. Code Ann. § 38-27-360 (2015).

5. S.C. Code Ann. § 38-27-360 sets forth the following grounds upon which an insurer may be placed into liquidation:

a. Any ground for an order of rehabilitation as specified in S.C. Code Ann. § 38-27-310 (2015), whether or not there has been a prior order directing the rehabilitation of the insurer;

b. The insurer is insolvent; or

c. The insurer is in such a condition that the further transaction of business would be hazardous, financially or otherwise, to its policyholders, its creditors, or the public.

6. Grounds for rehabilitation proceedings listed in Section § 38-27-310, include, but are not limited to, when the insurer is in a condition in which the further transaction of business would be hazardous, financially, to its policyholders, creditors, or the public; Petitioner has attempted to rehabilitate Respondent, and his duly-appointed deputy has submitted an affidavit describing those efforts and confirming that further attempts to rehabilitate an insurer would substantially increase the risk of loss to creditors, policyholders, or the public or would be futile.

7. The Special Deputy Receiver has concluded that Respondent is irreversibly insolvent, by more than \$39 million as of December 31, 2015; the South Carolina Life and Accident and Health Guaranty Association has been charged with performing its statutory obligation to fund all covered claims in accordance with Chapter 29 of Title 38 of the Code of Laws of South Carolina 1976, as amended; and, the implementation now of a formal proof of claim process provided under S.C. Code Ann. § 38-27-550 (2015) will best serve and protect the interests of creditors, policyholders, and the public.

8. Respondent is in a condition in which the further transaction of business would be hazardous, financially or otherwise, to its policyholders, creditors, or the public, which constitutes grounds for liquidation under Section 38-27-360; and Respondent is insolvent as defined by S. C. Code Ann. § 38-27-50(10)(b) (2015), in that it is unable to pay its obligations when they are due and its admitted assets do not exceed its liabilities plus the capital and surplus required by law.

9. In accordance with S.C. Code Ann. § 38-27-350(a) (2015), Petitioner has established to the satisfaction of the Court that further attempts to rehabilitate Respondent would substantially increase the risk of loss and/or be futile.

10. The Court has jurisdiction over this matter.

11. It is in the best interest of Respondent, its policyholders, its creditors and the public that the relief requested be granted.

IT IS THEREFORE ORDERED THAT:

1. PURSUANT TO S.C. Code Ann. § 38-27-370 (2015), Petitioner and his successors in office are appointed Liquidator of Respondent.

2. PURSUANT TO S.C. Code Ann. § 38-27-370(B) (2015), the rights and liabilities of the insurer and its creditors, policyholders, shareholders, members, and other persons interested in its estate become fixed as of the date of entry of the order of liquidation, except as provided in S.C. Code Ann. §§ 38-27-380 and 38-27-560 (2015); and, any claim excepted under this provision and Section 38-27-370(B) shall be governed by Sections 38-27-380 and 38-27-560, as applicable.

2. PURSUANT TO S.C. Code Ann. § 38-27-400(a) (2015), Petitioner and his successors shall have all the powers and responsibilities set forth under that section to assist him or his designee as Liquidator, including but not limited to:

a. To appoint a special deputy to act for him and to determine the special deputy's reasonable compensation, who shall have all powers of the Liquidator granted by this section and who serves at the pleasure of the Liquidator.

b. To employ employees and agents, legal counsel, actuaries, accountants, appraisers, consultants, and other personnel he considers necessary to assist in the liquidation.

c. To fix the reasonable compensation of employees and agents, legal counsel, actuaries, accountants, appraisers, and consultants with the Court's approval.

d. To pay reasonable compensation to persons appointed and to defray from the funds or assets of the insurer all expenses of taking possession of, conserving, conducting, liquidating, disposing of, or otherwise dealing with the business and property of Respondent. In the event that Respondent's property does not contain sufficient cash or liquid assets to defray the costs incurred, the Director may advance the costs so incurred out of any appropriation for the maintenance of the Department of Insurance. Any amounts so advanced for expenses of administration must be repaid to the Director for the use of the Department out of the first available monies of the insurer.

e. To hold hearings, to subpoena witnesses to compel their attendance, to administer oaths, to examine any person under oath, and to compel any person to subscribe to his 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 he considers relevant to the inquiry.

f. To collect all debts and monies due and claims belonging to Respondent, wherever located, and, for this purpose:

(i) To institute timely action in other jurisdictions in order to forestall garnishment and attachment proceedings against the debts.

(ii) To do other acts necessary or expedient to collect, conserve, or protect its assets or property, including the power to sell, compound, compromise, or assign debts for purposes of collection upon terms and conditions he considers best.

(iii) To pursue any creditor's remedies available to enforce his claims.

g. To conduct public and private sales of the property of Respondent.

h. To use assets of the estate of Respondent to transfer policy obligations to a solvent assuming insurer, if the transfer can be arranged without prejudice to applicable priorities under S.C. Code Ann. § 38-27-610 (2015).

i. To acquire, hypothecate, encumber, lease, improve, sell, transfer, abandon, or otherwise dispose of or deal with any property of Respondent at its market value or upon terms and conditions that are fair and reasonable. He also has power to 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. To borrow money on the security of Respondent's assets or without security and to execute and deliver all documents necessary to that transaction for the purpose of facilitating the liquidation.

k. To enter into contracts necessary to carry out the order to liquidate, and to affirm or disavow any contracts to which the insurer is a party.

l. To continue to prosecute and to institute in the name of Respondent or in his own name any and all suits and other legal proceedings, in this State or elsewhere, and to abandon the prosecution of claims he considers unprofitable to pursue further. If Respondent is dissolved under S.C. Code Ann. § 38-27-390 (2015), he has the power to apply to any court in this State or elsewhere for leave to substitute himself for Respondent as plaintiff.

m. To prosecute any action which may exist in behalf of the creditors.

members, policyholders, or shareholders of Respondent against any officer of Respondent or any other person.

n. To remove any or all records and property of Respondent to the offices of the Department or to any other place convenient for the purposes of efficient and orderly execution of the liquidation, *provided* that guaranty associations and foreign guaranty associations shall have such reasonable access to the records of Respondent as is necessary for them to carry out their statutory obligations.

o. To deposit in one or more banks in this State sums required for meeting current administration expenses and dividend distributions.

p. To invest all sums not currently needed, unless the Court orders otherwise.

q. 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 Respondent is located.

r. To assert all defenses available to Respondent as against third persons, including statutes of limitation, statutes of fraud, and the defense of usury. A waiver of any defense by Respondent after a petition in liquidation has been filed does not bind the Liquidator. Whenever a guaranty association or foreign guaranty association has an obligation to defend any suit, the Liquidator shall give precedence to that obligation and may defend only in the absence of a defense by the guaranty associations.

s. To exercise and enforce all the rights, remedies, and powers of any creditor, shareholder, policyholder, or member, including any power to avoid any transfer or lien that may be given by the general law and that is not included with S.C. Code Ann. §§ 38-27-450

through 38-27-470 (2015).

t. To intervene in any proceeding wherever instituted that might lead to the appointment of a receiver or trustee and to act as the receiver or trustee whenever the appointment is offered.

u. To enter into agreements with any receiver or commissioner of any other state relating to the rehabilitation, liquidation, conservation, or dissolution of an insurer doing business in both states.

v. To exercise all powers now held or hereafter conferred upon receivers by the laws of this State not inconsistent with applicable law.

w. To audit the books and records of agents of Respondent insofar as those records relate to the business activities of the insurer.

x. Notwithstanding the powers of the Liquidator as enumerated above and granted pursuant to Section 38-27-400, the Liquidator is not obligated to defend claims or to continue to defend claims after the entry of a liquidation order.

3. PURSUANT TO S.C. Code Ann. § 38-27-400(b) (2015), the enumeration in this Order of the powers and authority of the Liquidator may not be construed as a limitation upon him; nor shall it exclude in any manner his right to do other acts not herein specifically enumerated, or otherwise provided for, that may be necessary or appropriate for the accomplishment of or in aid of the purpose of liquidation.

4. PURSUANT TO S.C. Code Ann. §§ 38-27-410, -540 & -550 (2015), the Liquidator shall provide Notice of this Order, prescribe the form of a Proof of Claim to be used by all

claimants, which shall set forth the date for submission of claims, or Bar Date, after which no claim will be allowed except as provided in Section 38-27-540, except that the Liquidator shall not be required to provide further notice or a Proof of Claim to health care providers; and, said Bar Date is hereby set as December 31, 2016.

5. PURSUANT TO S.C. Code Ann. §§ 38-27-70 & -430 (2015) and the Rehabilitation Order, Notice is hereby given that the permanent automatic stay and injunction applicable to all persons and proceedings, other than the Receiver, shall remain in full force and effect and survive the entry of this Order.

6. All other provisions of the Rehabilitation Order not inconsistent with this Order or the laws governing insurance company liquidation proceedings shall remain in full force and effect to the extent necessary or appropriate for the accomplishment of the liquidation or to aid the Liquidator in effecting the purpose of the liquidation.

7. Continuation and cancellation of coverage shall be governed by S.C. Code Ann. § 38-27-380(b) (2015).

8. Upon filing by the Liquidator with the office of the Secretary of State a certified true copy of the Liquidation Order, Respondent is dissolved in accordance with S.C. Code Ann. § 38-27-390 (2015).

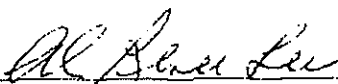
9. Respondent is hereby officially declared insolvent as defined by S.C. Code Ann. § 38-27-50(10) (2015).

10. Petitioner's designation of Michael J. FitzGibbons of FitzGibbons and Company, Inc., 9821 N. 95th St., Suite 105, Scottsdale, Arizona 85258, as a consultant to the Liquidator and as Special Deputy Liquidator, in this matter, with such reasonable compensation as determined by

the Liquidator pursuant to S.C. Code Ann. § 38-27-400(a)(1) (2015) is hereby expressly approved, and said Special Deputy Liquidator shall have all powers of the Liquidator granted by S.C. Code 38-27-400 (2015) and this Order and shall serve at the pleasure of the Liquidator.

11. This Court retains jurisdiction of this cause for the purpose of granting such other and further relief as from time to time may be necessary and appropriate.

AND IT IS SO ORDERED.



Alison R. Lee
Chief Administrative Judge
Fifth Judicial Circuit

This 24th day of March, 2016
Columbia, South Carolina