RECEIVED
JUL - 7 2009
Dav. Co. Chancery Court

IN THE CHANCERY COURT OF THE STATE OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY

STATE OF TENNESSEE, *ex rel.* LESLIE A. NEWMAN in her official capacity as COMMISSIONER OF COMMERCE AND INSURANCE, on behalf of the employees of Norwalk Furniture Corporation of Tennessee (aka Norwalk Wood Products Division) for Tennessee self-insured workers' compensation benefits,

Petitioner,

vs.

MIDWEST EMPLOYERS CASUALTY COMPANY, A Missouri domiciled insurance company, and NORWALK FURNITURE CORPORATION OF TENNESSEE, A Tennessee domiciled corporation.

Respondents.

Re: Bond for Workers' Compensation Self-Insurance of Norwalk Furniture Corporation of Tennessee – for claims incurred January 1, 1992 to July 1, 2007.

No. 09-384-III

FILED
2009 JUL 13 PM 3:49
CLERK & MASTER
DAVIDSON CO. CHANCERY CT.
D.C. & M.

ORDER APPROVING COMMISSIONER AS ADMINISTRATOR OF BOND FUND TO ENTER INTO LOSS PORTFOLIO TRANSFER, LIFTING STAY UPON TRANSFER, AND REQUIRING NOTICES INCLUDING PUBLICATION

The Court has under consideration the Motion filed June 24, 2009, by Leslie A. Newman, in her official capacity as Commissioner of the Tennessee Department of Commerce and Insurance, and as Administrator of the Bond Fund for the use and benefit of the employees of Norwalk Furniture Corporation of Tennessee (Norwalk/TN), appointed under order of this Court on April 2, 2009, for approval of a transaction to transfer Bond Fund liabilities and rights of recoveries as set forth in the Order of April 2, 2009, via a Loss Portfolio Transfer (LPT) as attached to the Motion. The Motion was set on this Court's docket for July 10, 2009, and no responses in opposition were filed timely by the deadline established under the Local Rule; Accordingly, the Court considering the premises of the Motion, finds good cause has been shown

to approve the Commissioner's immediate entry into the LPT on behalf of the Bond Fund, and grants the Motion by ORDERING as follows:

A) That the Commissioner execute on behalf of the Bond Fund, the LPT Agreement with Brentwood National Insurance Company (BNIC) attached at Exhibit A to the Motion. That the Commissioner shall carry out the terms of the LPT Agreement, including expending the specified Bond Fund assets to pay the premium required by the LPT Agreement, ($485,000.00 to be paid at closing, minus any and all loss payments and allocated loss adjustment expenses payments made out of the Bond Fund since February 5, 2009, and plus any and all recoveries made by the Bond Fund since that same date) within thirty days of execution as provided therein, and that the Commissioner be granted full power to execute the LPT Agreement and such other matters or instruments as required by that Agreement to effectuate its terms and the transfer of liabilities and rights of recoveries set forth therein. That the Commissioner file with the Court notice, signed by a representative of BNIC, that the transaction has become effective, stating the date of the transfer of risk of loss to BNIC, and the exact dollar amount of the full payment made at the time of closing.

B) That, upon the effective date of the LPT Agreement, BNIC shall assume the specific transferred insurance liabilities provided for in the LPT Agreement, being solely liable for and charged with the administration and disposition of all aspects of the transferred liabilities, and succeed to all the rights of the Commissioner in the Bond Fund and to recoveries on behalf of the Bond Fund, as established in the Order of April 2, 2009, including that BNIC succeeds to all the rights that the employer Norwalk/TN would have to recover on any specific or aggregate excess insurance policies obtained by Norwalk/TN for the benefit of the employees covering high-cost claims and losses, to third-party and subrogation recoveries on amounts that it pays or paid, and to claim the same position as Norwalk/TN with respect to the Tennessee Second Injury Fund, if applicable to a claim. BNIC shall access any such third party recoveries to which an insurer or employer would be entitled in cases where such insurer/employer makes payments and a third party is liable to reimburse the insurer/employer.

C) That BNIC upon and after the effective date of LPT Agreement, is the sole and exclusive source to the employees of Norwalk/TN, and any other individuals or entities who do or could make claim for outstanding workers' compensation benefits in Tennessee, for such claims, for purposes of their enforcement in any manner against the Bond that Norwalk/TN filed with the Commissioner. That upon the effective date of the LPT Agreement, the sole and exclusive method for obtaining valid workers' compensation benefits respecting injuries incurred during the self-insured period of Norwalk/TN, January 1, 1992 to July 1, 2007, is by contacting and claiming such benefits through BNIC. This provision does not represent a ruling by this Court to excuse the failure of any injured worker to notify or have notified their employer previously under the Tennessee Workers' Compensation law after an injury, or excuse the failure of any

injured worker to otherwise comply with statutory or regulatory requirements for asserting a claim, such situation to be governed by the law and its particular facts.

D) Provision for Lifting of Stay and Resuming Workers' Compensation Actions and Regular Workers' Compensation Procedures: Upon BNIC's assumption of liabilities upon the effective date of the LPT Agreement, the temporary stay of workers' compensation actions and proceedings in this State shall be lifted and actions may proceed in an ordinary manner through appearance by BNIC, through counsel if necessary, as assuming insurer. BNIC may cite this Order, the Order of April 2, 2009, and the LPT Agreement, as authority for its appearance as the assuming insurer for, or in lieu of, Norwalk/TN in connection with self-insured workers' compensation matters.

E) Employees and any other individuals or entities who do or could make claim on the Bond Funds, continue to be restrained and permanently enjoined from instituting any action, levy, attachment, or proceeding with any pending action, against the State, the Commissioner, MWECC or the Bond Funds seeking satisfaction of their claims in any way against the Bond Funds, **except that those claims may proceed against BNIC in lieu of Norwalk/TN and the Bond Fund**, once the LPT Agreement is effective, as provided herein.

F) Non-Interference with BNIC – In recognition that Norwalk/TN is impaired with respect to handling and funding its own workers' compensation matters, this Court orders Norwalk/TN, its agents, officers, or other persons acting for it, not to interfere with BNIC's exclusive administration and disposition of the transferred liabilities, and to be enjoined from purporting to bind Norwalk/TN to any judgments or settlements and from taking any actions with respect to its workers' compensation liabilities which may interfere with or harm BNIC's exclusive administration of the workers' compensation claims (Transferred liabilities). All workers' compensation matters shall be directed by BNIC. Norwalk/TN, its agents, officers, or other persons acting for it, shall provide BNIC notice of any activities or events or legal actions of which they become aware that may affect its workers' compensation obligations.

G) BNIC will succeed to rights of cooperation to which the Commissioner and Bond Fund are entitled under the April 2, 2009 Order, whereby any administrators for Norwalk/TN, its attorneys and any attorneys representing injured workers and the workers themselves are to fully cooperate in all respects, including turning over or furnishing requested records, including workers' compensation activities and medical records, that are necessary to assist the administration of the Bond Fund.

G) NOTICES: The four employees with open claims against Norwalk/TN shall receive notice of this order by mail, through their counsel listed below. As BNIC will be using the same third party administrator that Norwalk/TN had previously used, with which claimants should be familiar, general notice to prior Norwalk/TN workers' compensation claimants with closed claims will be made by publication in a newspaper of general circulation in the vicinity of Cookeville, TN and Putnam County. The Commissioner

shall publish a legal notice of the LPT and of explicit instructions for contacting BNIC or its designated administrator, which shall be Brentwood Services Administrators, Inc., once per week for two (2) weeks, as soon as practicable after the LPT Agreement is effective, in a newspaper of general circulation covering Norwalk/TN's plant location in Cookeville, Tennessee.

The Notice shall contain text under the caption of this matter to include the following:

> **Notice of assumption of liabilities for Tennessee Workers' Compensation Benefits for Employees of Norwalk Furniture Corporation of Tennessee, aka Norwalk Wood Products Division, which operated a plant in Cookeville, Tennessee:** The employer was self-insured during the period January 1, 1992 to July 1, 2007, and in October, 2008, stopped paying any self-insured workers' compensation payments.
>
> On April 2, 2009, the Davidson County Chancery Court, ordered bond funds securing the employer's self-insurance obligation under Tenn. Code Ann. § 50-6-405(b) to be turned over to the Tennessee Commissioner of Commerce and Insurance. On [date of this order]_, 2009, the Court approved the Commissioner to use the fund to purchase coverage from a Tennessee insurance company through a loss portfolio transfer (LPT) for the employer's self-insured Tennessee workers' compensation liability.
>
> Under the LPT, Brentwood National Insurance Company (BNIC) has assumed insurance obligations to continue to pay and administer the valid workers' compensation benefits due from Norwalk Furniture Corporation of Tennessee. If your date of injury was between January 1, 1992 and July 1, 2007, **to access any workers' compensation benefits or medical care to which you may be entitled, or to which you may be entitled by prior judgment against your employer, you must contact BNIC's third party administrator, Brentwood Services Administrators, Inc. (BSAI), the same entity that administered the employer's self-insured workers' compensation claims, at the contact number below.** Contact BSAI with any and all notices, claims for coverage, or questions regarding this employer's Tennessee workers' compensation benefits. **Do not delay if any matter requires attention. The contact information is as follows:**
>
> [CONTACT INFORMATION]

Proof of publication shall be filed with the court, and the Department shall also post the order and this instructional information to employees and claimants of Norwalk/TN on its Departmental website for the Insurance Division.

H) Commissioner's Administrative Expenses: Out of the funds remaining after the LPT transaction, the remainder of the Bond Fund shall be used by the Commissioner to pay the costs of notice publication, and the Court costs. The Commissioner shall consider and recommend to the court whether any claim reserved by MWECC's counsel for reimbursement of its fees to review and cooperate with the Commissioner's bond suit, may be allowed out of the remaining bond fund. If any funds are to remain at the conclusion of this matter, the Petitioner shall give notice to MWECC as to any question of the disposition of such funds. The exhaustion of the Bond Fund shall close this matter.

I) The Commissioner may seek from this Court instructions as to any matter with respect to the Bond Fund. If any question arises as to the coverage of the bond fund period or as to a given claimant, this shall be determined by this Court. The Court retains jurisdiction to interpret and enforce this Order.

This is not a final order in the case.

IT IS SO ORDERED.

CHANCELLOR

Approved for entry by:

ROBERT E. COOPER, JR.

Attorney General

SARAH A. HIESTAND (14217)
Senior Counsel, Financial Division
Office of the Attorney General
P.O. Box 20207
Nashville, TN 37202-0207
(615) 741-6035; fax 615-532-8223
Attorneys for Petitioner Leslie A. Newman,
Commissioner, Tennessee Department of Commerce and Insurance
Administrator of the Bond Fund

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Order is being served by United State mail, postage prepaid, (or via handdelivery or email where indicated) on the interested parties, as set forth in the service list following on this the 7th - day of JULY, 2009.

SARAH A. HIESTAND

Notice/ Service list

Aubrey L. Brown, Esq.
Glankler Brown
One Commerce Square, Ste 1700
Memphis, TN 38103
Direct Dial 901-576-1710
abrown@glankler.com

and via email
Counsel to Respondent MWECC

Thomas L. Sandifer
Claims Attorney
Midwest Employers Casualty Company
14755 North Outer Forty Drive, Suite 300
Chesterfield, MO. 63017
Direct Dial 636-449-7148
Tsandifer@mwecc.com

and via email

INTERESTED NON PARTIES:

Brentwood National Insurance Company
104 Continental Place, Suite 200
Brentwood, Tennessee 37027
Proposed Insurer for LPT

Brentwood Services Administrators, Inc.
104 Continental Place, Suite 200
Brentwood, Tennessee 37027
ATTN: Everett Sinor
(615) 263.1300 (tel.) (615) 263.1301 (fax)
Everett.Sinor@bwood.com

and via email
Norwalk/TN's Third Party Administrator

Craig P. Fickling, Esq.
Fickling & Madewell
118 E. First St.
P.O. Box 1483

Cookeville, TN 38503
Phone 931-528-6403; fax 931-520-1628 and via fax
Attorney for claimant employees Darrell Denney, Clarence Grider and John Shock

David Day, Esq.
Law Office of David Day, PC
19 South Jefferson Ave., Suite 100
Cookeville, TN 38501
931-528-7002, fax 931-372-8280; david@daviddaypc.com and via email
Attorney for claimant employee Kenneth D. Lane

Dan Rader, III, Esq.
Moore, Rader, Clift & Fitzpatrick
46 North Jefferson Avenue
P.O. Box 3347
Cookeville, TN 38502-3347
Phone: 931-526-3311, fax 931-526-3092
danrader@citlink.net and via email
Norwalk/TN's defense counsel in workers' compensation cases.

SECOND INJURY FUND
STATE OF TENNESSEE
William G. Calhoun, Director of Legal Services, via email delivery to william.calhoun@tn.gov

Josh Baker, Esq.
General Civil Division
Tennessee Attorney General's Office
P.O. Box 20207
Nashville, TN 37202-0207
(handdelivery by intraoffice mail) and via email
Department of Labor and Workforce Development

(No mailing to Norwalk Furniture Corporation of Tennessee as all prior mailings have returned undeliverable and unable to be forwarded).