

NORTH CAROLINA

FILED

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 06 CVS 15155

WAKE COUNTY

2006 OCT 17 P 1: 34

WAKE COUNTY, CSC

STATE OF NORTH CAROLINA, on)
Relation of JAMES E. LONG,)
COMMISSIONER OF INSURANCE)
OF NORTH CAROLINA,)

Petitioner,)

vs.)

PHOENIX FUND, INC.,)

Respondent.)

ORDER OF REHABILITATION;
ORDER APPOINTING RECEIVER; and
ORDER GRANTING INJUNCTIVE RELIEF
[AOC Cover Sheet Codes: APRC; INJU]

THIS CAUSE came to be heard and was heard on October 17, 2006, before the undersigned Judge Presiding over the Superior Court of Wake County, North Carolina, upon the verified Petition filed herein on behalf of the State of North Carolina by the Petitioner James E. Long, in his capacity as Commissioner of Insurance of the State of North Carolina ("Petitioner"), seeking the entry of an Order of Rehabilitation against Phoenix Fund, Inc. ("Respondent"), appointment of a Receiver, and injunctive relief.

Based upon the record herein, and the consent of the Respondent, the Court makes the following:

FINDINGS OF FACT

1. The Petitioner is the Commissioner of Insurance of the State of North Carolina.
2. Respondent Phoenix Fund, Inc. is a Worker's Compensation Self-Insured Employer Group acting under Article 47 of Chapter 58 of the General Statutes of North Carolina, is incorporated under the laws of the State of North Carolina and has its registered office in Mecklenburg County, North Carolina.

3. Respondent has been under the administrative supervision of the Department of Insurance under Article 30 of Chapter 58 of the General Statutes since November 18, 2004.

4. The Respondent is in an impaired financial condition and is subject to delinquency proceedings within the meaning of Article 30 of Chapter 58 of the North Carolina General Statutes.

5. The Respondent is in such financial condition as to render the continuance of its business hazardous to its policyholders, creditors or the public.

6. Petitioner and Respondent agree that it is in the best interests of Respondent's members for Respondent to be placed into rehabilitation.

7. Respondent consents to being placed into rehabilitation in North Carolina, the appointment of Petitioner as receiver, and the entry of the injunctions set out herein.

CONCLUSIONS OF LAW

1. The Petitioner is the Commissioner of Insurance of the State of North Carolina, and the Petitioner has initiated this action in his official capacity on behalf of the State of North Carolina pursuant to N.C. Gen. Stat. §§ 58-30-15, 58-30-20, 58-30-65, 58-30-75, 58-30-80, and Article 38 of Chapter 1 of the North Carolina General Statutes by filing his verified Petition and a summons with the Clerk of Superior Court of Wake County.

2. Respondent is subject to delinquency proceedings under the provisions of Article 30 of Chapter 58 of the North Carolina General Statutes.

3. Grounds for the entry of an Order of Rehabilitation have been demonstrated by the Petitioner.

4. Grounds for the appointment of Petitioner as Rehabilitator under the provisions of N.C. Gen. Stat. Chapter 58, Article 30 have been demonstrated by the Petitioner.

5. It is in the best interests of Respondent's members for Respondent to be placed into rehabilitation.
6. Grounds for the appointment of Petitioner as Receiver have been demonstrated by the Petitioner.
7. Grounds for the entry of the injunctive relief set out herein have been demonstrated by the Petitioner.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED as follows:

1. That James E. Long, in his capacity as Commissioner of Insurance of the State of North Carolina, is HEREBY APPOINTED as Rehabilitator of the Respondent, pursuant to the provisions of Article 30 of Chapter 58 of the North Carolina General Statutes;
2. That, pursuant to Article 30 of Chapter 58 of the North Carolina General Statutes, title to all assets of the Respondent is hereby vested in the Rehabilitator; and the filing or recording of this Order with the Clerk of the Superior Court and the Register of Deeds of the County in which the Respondent's principal office or place of business is located; or, in the case of real estate, with the Register of Deeds of the county where the real property is located, shall impart the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with that Register of Deeds, would have imparted;
3. The Rehabilitator is hereby authorized, empowered and directed to take into his possession and control all property, stocks, bonds, securities, bank accounts, savings accounts, monies, accounts receivable, books, papers, records, data bases, printouts and computations, whether stored by microfilm, electronic, optical, magnetic or other means, whether stored in tapes, disks, or other media, and all other

assets of any and all kinds and nature whatsoever belonging to the Respondent, wherever located, and to conduct Respondent's business and administer Respondent's assets and affairs under the general supervision of this Court;

4. The Rehabilitator is hereby vested with all other powers, authority, and duties provided by N.C. Gen. Stat. Chapter 58, Article 30;

5. The Rehabilitator is hereby authorized to appoint a Special Deputy Commissioner to act for the Rehabilitator in connection with this or any other delinquency proceedings against the Respondent; the Rehabilitator or said Special Deputy Commissioner is authorized to employ and to discharge such counsel, clerks or assistants as the Rehabilitator or said Special Deputy Commissioner shall deem to be necessary, or to utilize State employees for said purposes if he has determined that the use of State employees to conduct certain aspects of the rehabilitation is the most cost effective method of administering this or any other delinquency proceeding; the Rehabilitator or said Special Deputy Commissioner is further authorized to obtain such bonds, errors and omissions insurance, or excess liability insurance, in addition to any such coverage that may be already provided for employees of the Department of Insurance, as a reasonably prudent person charged with the Rehabilitator's duties would deem to be appropriate; that the compensation for the services of counsel, clerks or assistants and employees, and all expenses of taking possession of the Respondent and of conducting delinquency proceedings against the Respondent, shall be paid out of the funds of the Respondent pursuant to N.C. Gen. Stat. § 58-30-85, with compensation for the services for counsel, clerks or assistants to be at the prevailing customary rates;

6. The Rehabilitator is authorized, empowered and directed to incur such expenses for communication and traveling expenses for himself, his agents or attorneys as may be necessary in the

proper administration of his duties as Rehabilitator and also to incur such other expenses as the Rehabilitator may deem advisable or necessary in order to properly conduct and perform his duties as Rehabilitator;

7. The Rehabilitator may accept new business or renewals on behalf of the Respondent, in his discretion, consistent with the public welfare;

8. The Rehabilitator is hereby authorized to notify state or federal regulators of this action;

APPOINTMENT OF RECEIVER

9. James. E. Long, in his capacity as Commissioner of Insurance of the State of North Carolina, is HEREBY APPOINTED as Receiver of the Respondent, pursuant to the provisions of Article 38 of Chapter 1 of the North Carolina General Statutes;

10. Petitioner, as Receiver, is hereby vested with such other powers, authority, and duties as are provided by N.C. Gen. Stat. Chapter 1, Article 38;

INJUNCTION AGAINST INTERFERENCE WITH REHABILITATION

11. All persons, firms, corporations, municipalities, counties and the State of North Carolina are hereby enjoined and restrained from interfering in any manner with the property or assets of the Respondent or with said Rehabilitator in the exercise of his duties, and they are further enjoined and restrained from instituting any suit or other action against the Rehabilitator or the Respondent's property for a period of 120 days from the entry of this Order except by the permission of this Court first had and obtained;

12. Any and all pending actions against the Respondent are hereby stayed effective as of the date of this Order, until further order of the Court;

13. All persons, firms and corporations with notice of the Court's Order are hereby enjoined from obtaining preferential payments or transfers, judgments, attachments, garnishments, or liens against the Respondent or its assets, and are enjoined from levying upon, or execution or foreclosure against the Respondent or its assets, until further order of the Court;

14. The Respondent, its trustees, officers, directors, agents, employees, third party administrators, and all other persons with notice of this Order are hereby enjoined and restrained from the disposition, waste or impairment of any of Respondent's property, assets, or records, and said persons are enjoined from the transaction of further business unless supervised and approved by the Rehabilitator or his agents or deputies until further order of the Court, and all such persons are hereby ordered to surrender to the Rehabilitator any and all property or records of the Respondent in their custody or control, wheresoever situated;

15. The Respondent, its trustees, officers, agents, servants, employees, third party administrators, or attorneys are hereby enjoined and restrained from doing or permitting to be done anything which may allow or suffer any person to obtain a preference, judgment, attachment or other lien, or the initiation of a levy against the Respondent, without prior permission of this Court;

ACCOUNTING AND REPORTING

16. Pursuant to N.C. Gen. Stat. § 58-30-80(b), the Rehabilitator shall make a quarterly report to the Wake County Superior Court and the Rehabilitator shall include in said report a statement of receipts and disbursements to date and a balance sheet; that this accounting shall be filed in duplicate; that one copy shall be filed with the Clerk of Superior Court and one copy shall be submitted to the Judge presiding over the rehabilitation;

COMMISSIONER'S BOND

17. The official bond of the Petitioner, the Commissioner of Insurance of the State of North Carolina, shall be sufficient to serve for the faithful performance of his duties and obligations herein imposed;

18. This Order shall be effective as of the date it is filed; and

19. This cause is retained for further orders.

This 17th day of October, 2006.

JUDGE OF SUPERIOR COURT

WE CONSENT:

NORTH CAROLINA DEPARTMENT OF INSURANCE

BY: _____

Jeffrey A. Wendel
Deputy Commissioner of Insurance

PHOENIX FUND, INC.

BY: _____

Robert C. Paschal
Attorney for Phoenix Fund, Inc.