

NORTH CAROLINA

WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
99 CVS 2896

1999 MAR 29 AM 10:20
WAKE COUNTY, C.A.C.
BY _____

STATE OF NORTH CAROLINA, on)
 Relation of JAMES E. LONG,)
 COMMISSIONER OF INSURANCE)
 OF NORTH CAROLINA,)
)
 Petitioner,)
)
 v.)
)
 INTERNATIONAL WORKERS' GUILD)
 HEALTH AND WELFARE TRUST FUND,)
)
 Respondent.)

ORDER OF LIQUIDATION

THIS CAUSE coming on to be heard and having been heard 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 Honorable James E. Long in his capacity as Commissioner of Insurance of the State of North Carolina, seeking the entry of an Order of Liquidation against the International Workers' Guild Health And Welfare Trust Fund (IWG Fund), and

Based upon the evidence presented and the arguments and representations of counsel, the Court makes the following:

FINDINGS OF FACT

1. That Petitioner is the Commissioner of Insurance of the State of North Carolina;
2. That the Respondent IWG Fund is purportedly a self-funded and self-insured employee benefit plan existing to pay the health benefit claims of its participant employees and beneficiaries subject to the Employee Retirement Income Security

Act of 1974, 29 U.S.C. §1001, *et seq.* (ERISA);

3. That the IWG Fund is sponsored by the International Workers' Guild (IWG), a labor union and the National Association of Business Owners and Professionals (NABOP), an employer association, and that The Fidelity Group, Inc. (Fidelity) is the plan and claims administrator for the IWG Fund;

4. That the IWG Fund has engaged in the writing of medical insurance in the State of North Carolina;

5. That the medical insurance benefits provided by Respondent IWG Fund are not fully insured by an authorized insurer;

6. That the IWG Fund has operated in the State of North Carolina as a multiple employer welfare arrangement (MEWA) as defined by N.C. Gen. Stat. § 58-49-30 and ERISA;

7. That the IWG Fund is not licensed as an insurer in the State of North Carolina;

8. That, although the IWG Fund has claimed exemption from State regulation, the IWG Fund is subject to the jurisdiction of the Commissioner pursuant to N.C. Gen. Stat. Chapter 58, Article 49;

9. That the IWG Fund is not currently paying claims of North Carolina policyholders;

10. That the IWG Fund's financial condition is such that its further transaction of business will be hazardous to its policyholders and to the public within the meaning of N.C. Gen. Stat. § 58-30-100, and that such policyholders and the public

will face immediate and irreparable injury unless the relief prayed for by the Petitioner is granted;

11. Appointment of a liquidator is necessary to protect the policyholders and the public;

12. That, in order to prevent interference with the Petitioner or this proceeding, the Petitioner is entitled to an order enjoining and restraining all persons from interfering in any manner with the records of the Respondent in this State, staying any and all pending actions in the courts of this State against the Respondent, and providing that all persons, firms and corporations receiving actual notice of the Court's order be stayed from taking any action against the policyholders of the Respondent IWG Fund for claims covered by the Fund until further order of the Court.

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. §§ 58-49-55(a), 58-30-15, 58-30-20, and 58-30-265 by filing a Verified Petition For Order of Liquidation and Injunctive Relief and summons with the Clerk of Superior Court of Wake County;

2. This matter is now subject to the provisions of N.C. Gen. Stat. Chapter 58, Article 30;

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

4. The Petitioner is entitled to appointment as liquidator under the provisions of N.C. Gen. Stat. Chapter 58, Article 30; and

5. Good and sufficient cause justifying the appointment of a liquidator for the IWG Fund exists and the interests of its policyholders, creditors and the public will best be served by the appointment of James E. Long, Commissioner of Insurance of the State of North Carolina, as liquidator of said IWG Fund.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that:

COMMISSIONER APPOINTED LIQUIDATOR

1. The Honorable James E. Long, in his capacity as Commissioner of Insurance of the State of North Carolina, and his successors in office, is appointed as liquidator of the Respondent, pursuant to the provisions of Article 30 of Chapter 58 of the North Carolina General Statutes;

POWERS OF LIQUIDATOR

2. The liquidator shall be vested with such duties, powers, authorities, and obligations as are provided by N.C. Gen. Stat. Chapter 58, Article 30;

APPOINTMENT OF SPECIAL DEPUTY COMMISSIONER, EMPLOYEES

3. The liquidator is authorized to appoint a Special Deputy Commissioner to act for the liquidator in connection with the delinquency proceedings against the Respondent; that the liquidator or said Special Deputy Commissioner is authorized to employ and discharge such counsel, clerks or assistants as the liquidator or said Special Deputy Commissioner deems 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 liquidation is the most cost effective method of administering the delinquency proceeding and that this action benefits the estate and its creditors; and is further authorized to obtain such bonds, errors and omissions type insurance, or excess liability insurance, in addition to that already provided for employees of the Insurance Department, as a reasonably prudent person charged with the duties would deem to be appropriate; that the compensation for the services of the Special Deputy Commissioner, and for counsel, clerks or assistants and employees, and all expenses of conducting the delinquency proceedings against the Respondent shall be permitted to be paid out of the funds of the Respondent pursuant to N.C. Gen. Stat. § 58-30-120; that the compensation for the services of the Special Deputy Commissioner shall be at a level of compensation not to exceed \$75 per hour, plus all expenses, with compensation for the services for counsel, clerks or assistants to be at the prevailing customary rates;

LIQUIDATOR'S EXPENSES

4. The liquidator 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 liquidator and also to incur such other expenses as the liquidator may deem advisable or necessary in order to properly conduct and perform his duties as liquidator;

INJUNCTION AGAINST INTERFERING WITH LIQUIDATION

5. All persons, firms, corporations, municipalities, counties and the State of North Carolina are hereby enjoined and restrained from interfering in any manner with the records relating to the business of the Respondent or with said liquidator in the exercise of his duties, and they are further enjoined and restrained from instituting any suit against the liquidator except by the permission of this Court first had and obtained;

INJUNCTION AGAINST ACTIONS BY CREDITORS

6. All persons, firms and corporations receiving actual notice of the Court's Order are hereby stayed from the obtaining of preferences, judgments, attachments, garnishments, or liens against the Respondent or its assets, or the levying of execution against the Respondent or its assets, until further order of the Court, and all persons, firms and corporations receiving actual notice of the Court's Order are hereby stayed from taking any action against the policyholders of the IWG Fund for claims covered by the IWG Fund until further order of the Court;

INJUNCTION AGAINST WASTE, TRANSACTION OF BUSINESS

7. The Respondent, its trustees, officers, directors, agents, employees, and all other persons are hereby enjoined and restrained from the disposition or waste of any of the Respondent's records or records relating to the Respondent's business or the transaction of further business until further order of the Court, and all such persons are hereby required to transfer to the liquidator on demand any and all of the

Respondent's records or records relating to the Respondent's business;

COMMISSIONER'S BOND

8. 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;

LIQUIDATOR'S REPORTS

9. Pursuant to N.C. Gen. Stat. § 58-30-105, the liquidator of the IWG Fund shall make a report to the Wake County Superior Court on at least a quarterly basis and said reports shall include a statement of receipts and disbursements to date and a balance sheet;

10. This cause is retained for such further and other relief as may seem just and proper to this Court; and

EFFECTIVE DATE OF ORDER OF LIQUIDATION

11. This Order shall be effective as of the 29 day of March, 1999.

This the 29th day of March, 1999.

Judge presiding