

2001 TO

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

IN THE MATTER OF THE LIQUIDATION OF)
UNITED CAPITOL INSURANCE COMPANY) **No. 01 CH 14957**

**ORDER FIXING
RIGHTS AND LIABILITIES AND
PROVIDING FOR THE FILING OF CLAIMS
AND THE SETTING OF CLAIM FILING DEADLINES**

THIS CAUSE COMING ON TO BE HEARD upon the petition of NATHANIEL S. SHAPO, Director of Insurance of the State of Illinois, as Liquidator (the "Liquidator") of United Capitol Insurance Company ("United Capitol") for the entry of an order fixing rights and liabilities and providing for the filing of claims and the setting of claim filing deadlines; due notice having been given, the Court having jurisdiction over the parties hereto and the subject matter hereof, the Court having reviewed the petition filed herein and having heard from counsel thereon, and the Court being otherwise fully advised in the premises:

THE COURT FINDS:

1. That on November 14, 2001, this Court entered an Order of Liquidation With A Finding of Insolvency ("Order of Liquidation") as to and against United Capitol pursuant to Section 188 of the Illinois Insurance Code (the "Code"), 215 ILCS 5/188. The Order of Liquidation appointed the Director of Insurance, and his successors in office, as Liquidator of United Capitol and authorized him to take such action as the nature of the cause and the interests of United Capitol, its policyholders, creditors and stockholders, and the public, may require.
2. That, pursuant to Section 209(5) of the Code, 215 ILCS 5/209(5), the obligation of United Capitol, if any, to defend or continue the defense of any claim or suit under a liability insurance policy was terminated upon the entry of the Order of Liquidation.
3. That the Liquidator has determined that a number of persons, companies and entities have, claim to have, or may have, claims against United Capitol, its insureds or policyholders, or its property or assets.

4. That the Liquidator has further determined that, in order to effectively and promptly administer the affairs and assets of United Capitol and to protect the interests of its policyholders, creditors and stockholders, and the public, it is necessary that this order be entered pursuant to Sections 194, 208, and 209 of the Code, 215 ILCS 5/194, 5/208 and 5/209, fixing the rights and liabilities of United Capitol and of its creditors, policyholders, stockholders or members, and all other persons interested in its property or assets; establishing a procedure for the filing of proofs of claim against the assets of United Capitol in order that such claims, if meritorious, may share in any distribution of estate assets; setting a deadline for the filing of any such proofs of claim; and fixing the last date by which evidence supporting the liquidation of timely filed contingent claims may be received by the Liquidator.

IT IS HEREBY ORDERED:

A. That the rights and liabilities of United Capitol and its policyholders, creditors, stockholders or members, and all other persons interested in United Capitol's property or assets shall be and hereby are fixed, pursuant to the terms of the Order of Liquidation and Section 194 of the Code, 215 ILCS 5/194, as of November 14, 2001, except to the extent that direct policies or contracts of insurance were terminated subsequent to November 14, 2001, pursuant to Paragraph (M) of the Order of Liquidation, or to the extent that persons are entitled to file contingent claims as hereinafter set forth, or unless otherwise provided by subsequent order of this Court.

B. That the Liquidator is hereby directed to notify all persons, companies and entities, as hereinafter set forth in Paragraphs (C) and (D), which United Capitol's books and records reveal have, or may have, claims against United Capitol, its property or assets, or against a United Capitol insured or policyholder, that all such claims must be presented to and filed with the Liquidator, or a duly authorized Ancillary Receiver of United Capitol, in the form of a proper proof of claim as hereinafter set forth, on or before November 14, 2002 at 4:30 p.m. (C.S.T.). Said notice by the Liquidator shall specify November 14, 2002 at 4:30 p.m. (C.S.T.) to be the last day by which any such proof of claim may be received by the Liquidator, or a duly authorized Ancillary Receiver of United Capitol, for the purposes of participating in any distribution of assets that may be made on timely filed claims which are allowed in these proceedings.

C. That a notice of the claims filing procedures and claim filing deadlines shall be served upon those persons, companies and entities which United Capitol's books and records

reveal have, or may have, claims against United Capitol, its property or assets, or against a United Capitol insured or policyholder, by the Liquidator depositing a copy of said notice, together with a proof of claim form, in the United States mail, enclosed in an envelope, with first class postage prepaid, address to each such person, company or entity at his, her or its last known address as disclosed by United Capitol's books and records.

D. That the Liquidator is hereby directed to also provide notice by publication to all persons, companies or entities who have, or may have, claims against United Capitol, its property or assets, or against its insureds or policyholders, by causing a notice to be published at least once each week for three consecutive weeks in a newspaper of general circulation published in the County of Cook, State of Illinois, and in such other publication(s) as he may deem advisable. That the notice so published shall: (a) advise all such persons, companies and entities of their right to present their claim or claims against United Capitol, its property or assets, or against a United Capitol insured or policyholder, to the Liquidator; (b) advise all such persons, companies and entities of the procedure by which they may present their claims to the Liquidator; (c) advise all such persons, companies and entities of the location of the Liquidator's office where they may present their claims; and (d) specifying the last day by which proofs of claims may be received by the Liquidator for purposes of participating in any distribution of assets that may be made on timely filed claims allowed in these proceedings.

E. That all persons, companies or entities having, or claiming to have, any accounts, debts, claims or demands against United Capitol, its property or assets, or against a United Capitol insured or policyholder, are hereby directed to present its claims to the Liquidator at his office as designated in the above described notice, on or before the claim filing deadline set forth in Paragraph (B) above, by way of a properly completed proof of claim. Further, that a proper proof of claim must consist of a statement, under oath, in writing, signed by the claimant, setting forth a specific claim, the consideration therefor, and whether any, and if so what, payments have been made thereon, and that the sum so claimed is justly owing from United Capitol to the claimant; and, furthermore, that whenever a claim is founded upon an instrument in writing, such instrument, unless lost or destroyed, shall be filed with the proof of claim and, if such instrument is lost or destroyed, a statement of such fact and the circumstances of such loss or destruction shall be filed under oath with the claim.

F. That, pursuant to Section 209(4) of the Code, 215 ILCS 5/209(4), any insured under an insurance policy issued by United Capitol shall have the right to present the Liquidator with a proof of claim setting forth a contingent claim, subject to the claim filing deadline set

forth in Paragraph (B) above. Further, that the final date by which evidence supporting the liquidation of any such contingent claim may be received by the Liquidator shall be November 14, 2003 at 4:30 p.m. (C.S.T.); and that no such contingent claim shall be allowed for purposes of participating in any distribution of estate assets that may be made at the fourth priority level [215 ILCS 5/205(1)(d)] unless such claim has been liquidated and the insured claimant has presented evidence of payment of such claim to the Liquidator on or before November 14, 2003 at 4:30 p.m. (C.S.T.). Furthermore, that any contingent claim for which a proof of claim was received by the claim filing deadline set forth in Paragraph (B) above, but which is not liquidated by November 14, 2003, may be estimated pursuant to Section 209(4)(b) of the Code, 215 ILCS 5/209(4)(b), for the purposes of participating in any distribution of estate assets that may be made at the fifth priority level [215 ILCS 5/205 (1)(e)], unless this Court has issued an order pursuant to 215 ILCS 5/209(12) relieving the Liquidator of his responsibility to review the unliquidated contingent claims based upon the Liquidator's report to the Court that the assets of the estate will not be sufficient to pay claims at the fifth priority level [215 ILCS 5/205(1)(e)].

G. That, pursuant to Section 209(5) of the Code, 215 ILCS 5/209(5), which provides that the obligation of United Capitol, if any, to defend or continue the defense of any claim or suit under a liability policy was terminated upon the entry of the Order of Liquidation, an insured of United Capitol may include in their contingent claims reasonable attorneys' fees for services rendered subsequent to the entry of the Order of Liquidation in the defense of claims or suits covered by the insured's liability insurance policy, provided that all such attorneys' fees have actually been paid by the insured and evidence of such payment has been presented in the manner required for the liquidation of an insured's contingent claim as set forth in Paragraph (F) above.

H. That any person, company or entity having a cause of action against a United Capitol insured under an insurance policy issued by United Capitol, whose claim was a contingent claim as of the entry of the Order of Liquidation, may file its claim as set forth in Paragraph (B) above, and such claim may be allowed: (a) if it may be reasonably inferred from the proof presented upon the claim that the claimant would be able to obtain a judgment upon the cause of action against such insured; (b) if such person, company or entity has furnished suitable proof, unless this Court for good cause shown shall otherwise direct, that no further valid claims against United Capitol arising out of the cause of action other than those already presented can be made; and (c) if the total liability of United Capitol to all claimants arising out of the same act shall be no greater than its total liability would be were it not in liquidation.

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I. That, subject to the provisions for the late filing of claims contained in Section 208(2) and 208(3) of the Code, 215 ILCS 5/208(2)-(3), and Section 545(b) of the Code, 215 ILCS 5/545(b), which exempts the Illinois Insurance Guaranty Fund and any similar organization(s) in other states from the requirements of Sections 208 and 209 of the Code, *supra*, no person having or claiming to have any claim or claims against United Capitol shall participate in any distribution of the assets of United Capitol unless such claims are filed or presented in accordance with and within the time limits established by this Order.

J. That the Liquidator is hereby directed, pursuant to Section 209 of the Code, 215 ILCS 5/209, and subject to the further order of this Court, to examine and investigate any and all properly filed proofs claim and to submit his recommendations as to the allowance or disallowance, in whole or in part, of each such claim to this Court, unless it is reported to the Court that the assets of the estate will not be sufficient to pay claims at a certain level of priority under 215 ILCS 5/205, and this Court therefore exempts the Liquidator pursuant to 215 ILCS 5/209(12) from evaluation or adjudication of any claims at the designated level of priority. Further, that upon the filing of such report on claims recommendations pursuant to 215 ILCS 5/209(13), and any hearing on any objections thereto, this Court shall thereupon take further action as justice may require.

K. That the Liquidator shall not pay the claims of any creditors, policyholders, insureds or other claimants of United Capitol required to file proofs of claim until the deadlines for the timely presentment of proofs of claim to the Liquidator and the submission of evidence for the liquidation of insureds' contingent claims have both passed, and the Liquidator has estimated all unliquidated contingent claims, or this Court has entered an order pursuant to 215 ILCS 5/209(12) as set forth in Paragraph (F) herein, and all such claims have been allowed or disallowed, in whole or in part, by order of this Court, unless payment of such claims is hereafter authorized or approved by this Court, or payment is made to the Illinois Insurance Guaranty Fund or to any similar organization(s) in other states pursuant to Section 205(2) of the Code, 215 ILCS 5/205(2).

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ENTERED
CLERK OF CIRCUIT COURT
DOROTHY BROWN
DEC 07 2001
JUDGE DOROTHY KINNAIRD-278
DEPUTY CLERK