

43

ORIGINAL

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

IN THE MATTER OF THE)
REHABILITATION OF NATIONAL) C.A. No. 13530
HERITAGE LIFE INSURANCE COMPANY)

LIQUIDATION AND INJUNCTION ORDER

WHEREAS, the Honorable Donna Lee H. Williams, the Insurance Commissioner for the State of Delaware, heretofore appointed as the Receiver of the National Heritage Life Insurance Company in Rehabilitation by Order dated May 25, 1994 (the "Receiver"), has filed with the Court a petition seeking a Liquidation and Injunction Order concerning National Heritage Life Insurance Company ("National Heritage") pursuant to Title 18 Del. C. §5901, et seq.;

WHEREAS, a hearing on the financial status of National Heritage and for interested parties to show cause why National Heritage should not be declared insolvent and ordered liquidated was held by the Court on 11/21/95; and

WHEREAS, the Receiver has submitted evidence that National Heritage is insolvent, in that as of September 30, 1995, National Heritage's liabilities exceeded its assets by approximately \$214 million and that as of the hearing date, the negative surplus was approximately \$214 million.

NOW THEREFORE, the Court finds and IT IS HEREBY ORDERED as follows:

1. National Heritage is insolvent as that term is defined in 18 Del. C. §5901.
2. Sufficient cause exists for the liquidation of the respondent, National Heritage, pursuant to 18 Del. C. §§ 5906 and 5910 and a Liquidation and Injunction Order is hereby entered against National Heritage.

3. The May 25, 1994 Rehabilitation and Injunction Order and the June 27, 1994 Supplemental Rehabilitation Order entered by this Court in this matter are hereby superseded, upon entry of this Order, and the Commissioner shall continue to serve as Receiver of National Heritage for the purpose of liquidation as set forth below.

4. The appointment of the Honorable Donna Lee H. Williams, Commissioner of Insurance of the State of Delaware, and her successors in office, as the Receiver of National Heritage is hereby continued and the Receiver is hereby directed to immediately take or maintain her exclusive possession and control of and to continue or be vested with all right, title and interest in, of or to the property of National Heritage, including, without limitation, all of National Heritage's assets, contracts, rights of action, funds recoverable under treaties and agreements of reinsurance heretofore entered into by National Heritage as the ceding insurer, books, records, bank accounts, certificates of deposit, collateral securing obligations to, or for the benefit of, National Heritage or any trustee, bailee or any agent acting for, or on behalf of, National Heritage (collectively, the "Trustees"), securities or other funds, and all real or personal property of any nature of National Heritage including, without limitation, furniture, fixtures and office supplies, wherever located, and including such property of National Heritage or collateral securing obligations to, or for the benefit of, National Heritage or any Trustee thereof that may be discovered hereafter, and all proceeds of or accessions to any of the foregoing, wherever located, in the possession, custody or control of National Heritage or any Trustee therefore (collectively, the "Assets"), and to liquidate the same pursuant to the provisions of Chapter 59 of the Delaware Insurance Code, and the Receiver is further authorized

to take such actions as the nature of this cause and interests of the policyholders, creditors and stockholders of National Heritage and the public may require.

5. The Receiver is hereby authorized to continue to deal with the Assets, business and affairs of National Heritage, including, without limitation, the right to sue for, defend for or continue suits already commenced by the Receiver for National Heritage, or for the benefit of National Heritage's policyholders, stockholders and creditors, in the courts and tribunals, agencies or arbitration panels in this State and other states in her name as the Commissioner of Insurance of the State of Delaware, or in the name of National Heritage.

6. The filing or recording of this Order or a certified copy hereof with the Clerk of this Court and with the recorder of deeds of the jurisdiction in which National Heritage's corporate and administration offices are located, or, in the case of real estate, with the recorder of deeds of the jurisdictions where the property is located, shall impart the same notice as would be imparted by a deed, bill of sale or other evidence of title duly filed or recorded with that recorder of deeds. Without limiting the foregoing, the filing of this Order with the Clerk of this Court also constitutes notice to all sureties and fidelity bondholders of National Heritage of all potential claims against National Heritage under such policies and shall constitute the perfection of a lien in favor of National Heritage under the Uniform Commercial Code or any like Federal or state law, regulation or order dealing with the priority of claims.

7. Except as otherwise indicated elsewhere in this Order, and upon notice provided by the Receiver, all agents and brokers, former officers, former directors, stockholders and all other persons or entities now or prospectively holding Assets of, or on behalf of, National

Heritage shall forthwith file an accounting of those Assets with the Receiver and shall within ten (10) days of the entry of this Order, turn those Assets over to the Receiver.

8. The Receiver may, in her discretion, appoint or continue the appointment of a consultant or other person or persons to serve as Special Deputy Receiver(s) to assist the Receiver in accomplishing the directive of this Order. The Special Deputy Receivers shall serve at the pleasure of the Receiver and, subject to the approval of the Receiver, shall be entitled to exercise all of the powers and authorities vested in the Receiver pursuant to this Order and applicable law.

9. The Receiver may employ or continue to employ and fix the compensation of such deputies, counsel, clerks, employees, accountants, actuaries, consultants, assistants and other personnel (collectively, the "Designees") as considered necessary, and all compensation and expenses of the Special Deputy Receiver(s) and the Designees and of taking possession of National Heritage and conducting this proceeding shall be paid out of the funds and assets of National Heritage as administrative expenses under Title 18 Del. C. §5913(f). Each and every Designee shall be deemed to have submitted to the jurisdiction of this Court for the resolution of any disputes between the Receiver and such Designee concerning such Designee's rights, obligations and compensation.

10. The Receiver, the Special Deputy Receivers and the Designees (collectively, the "Indemnitees") shall have no personal liability for their acts or omissions in connection with their duties during the rehabilitation and liquidation periods, provided that such acts or omissions are or were undertaken in good faith and without willful misconduct, gross negligence or criminal intent. All expenses, costs and attorney's fees incurred by the Indemnitees in

connection with any lawsuit brought against them in their representative capacities shall be subject to the approval of the Receiver and shall be exclusively paid out of the funds and assets of National Heritage. The Indemnitees shall not be deemed to be employees of the State of Delaware.

11. The Receiver's right, title and interest in and to all funds recoverable under treaties and agreements of reinsurance heretofore entered into by National Heritage as the ceding insurer shall continue, and all reinsurance companies involved with National Heritage are enjoined and restrained from making any settlements with any claimant or policyholder of National Heritage other than the Commissioner as Receiver. The amounts recoverable by the Receiver from any reinsurer of National Heritage shall not be reduced as a result of this liquidation proceeding or by reason of any partial payment or distribution on a reinsured policy, contract or claim, and each such reinsurer of National Heritage is hereby enjoined and restrained from terminating, cancelling, failing to extend or renew, or reducing or changing coverage under any reinsurance policy or contract with National Heritage, except for non-payment of premium. The Receiver may terminate or rescind any contract with a reinsurer or reinsurers that is contrary to the best interests of the estate in liquidation.

12. The Receiver is hereby authorized to transfer National Heritage's assets and liabilities, to the extent such liabilities are not covered by a state guaranty association, to an affiliate, subsidiary or trust for the overall benefit of National Heritage's policyholders, other creditors, and stockholder, subject to approval by this Court.

13. The Receiver may change to her own name the name of any of National Heritage's accounts, funds or other property or assets held with any bank, savings and loan association or other financial institution, and may withdraw such funds, accounts and other property or assets from such institutions or take any lesser action necessary for the proper conduct of this liquidation.

14. The Receiver may reject any executory contract to which National Heritage is a party that the Receiver may in her discretion determine is burdensome to National Heritage or is otherwise not in its best interest. Any party to a rejected contract may file a claim only for damages arising from such rejection in accordance with paragraph 18, below. All claims of policyholders enumerated in 18 Del. C. §5918(e) shall have priority over all non-policyholder claims arising from the rejection of executory contracts.

15. National Heritage, its former officers, former directors, stockholders, agents, servants and employees and all other persons having notice of these proceedings or of this Order are hereby prohibited from transacting any business of, or on behalf of, National Heritage or selling, transferring, destroying, wasting, encumbering or disposing of any of the Assets, without the prior written permission of the Receiver or until further Order of this Court.

16. All banks, brokerage houses, agents, reinsurers, or other companies or persons, either having in their possession Assets or possible Assets (including, without limitation, books or records of National Heritage), or having notice of these proceedings or of this Order, are hereby enjoined and restrained from disposing of, selling, wasting, encumbering, transferring or destroying any such Assets or possible Assets (including, without limitation, books or records of National Heritage). This prohibition includes, without limitation, Assets, possible Assets,

books or records pertaining to any business transaction between National Heritage and any of said parties. No actions concerning, involving, or relating to such Assets, possible Assets, books or records may be taken by any of the aforesaid persons or entities enumerated herein, without the prior written consent of the Receiver, or until further Order of this Court.

17. All former officers, former directors, stockholders, agents, servants and employees of National Heritage, and all other persons and companies having notice of these proceedings or of this Order, are hereby enjoined and restrained from instituting or further prosecuting any action at law or in equity or in other proceedings against National Heritage, the Commissioner as Receiver, the Special Deputy Receiver(s) or the Designees in connection with their duties as such, or from obtaining preferences, judgments, attachments or other like liens or encumbrances, or foreclosing upon or making of any levy against National Heritage or the Assets, or exercising any right adverse to the right of National Heritage to or in the Assets, or in any way interfering with the Receiver, the Special Deputy Receiver(s) or the Designees either in their possession and control of the Assets, books, and records of National Heritage or in the discharge of their duties hereunder.

18. All persons and companies are hereby enjoined and restrained from asserting any claim against the Commissioner as Receiver of National Heritage, or against the Special Deputy Receiver(s) or the Designees in connection with their duties as such, or against the Assets, except insofar as such claims are brought in the liquidation proceedings of National Heritage.

19. The Court hereby imposes a temporary moratorium on payment of cash values, surrenders, policy loans or any other right to withdraw funds held in conjunction with the policies or contracts of National Heritage, in addition to the Receiver's and the state guaranty associations' right to implement any contractual provision for deferral of cash payment or policy loans, for a period of 120 days from the date of this Order, provided that any state guaranty association may voluntarily choose to permit a full or partial payment of cash values, surrenders, policy loans or any other right to withdraw funds for claims covered by the applicable state guaranty association law.

20. Within a reasonable time after receipt of a claim in the liquidation proceedings of National Heritage, the Receiver shall give notice by mail to any and all persons interested in such claim of the Receiver's proposed report and recommendation to the Court regarding the allowance or denial (in whole or in part) of such claim.

21. Within sixty (60) days of the mailing of the proposed report and recommendation, the interested person being given notice of such proposed report and recommendation may file a written objection thereto with the New Castle County Register in Chancery, 1000 King Street, Wilmington, Delaware, 19801, and the Receiver.

22. Within a reasonable time after such sixty (60) days, there being no objection to the proposed report and recommendation, the Receiver shall file with the Court such report and recommendation.

23. No hearing will be held regarding the proposed report and recommendation in the absence of a written objection thereto by a person interested therein.

24. The Receiver shall provide semiannual reports on the financial condition of National Heritage and on the actions of the Receiver pursuant to this Order.

25. Hereafter the caption of this cause and all pleadings in this matter shall read as:

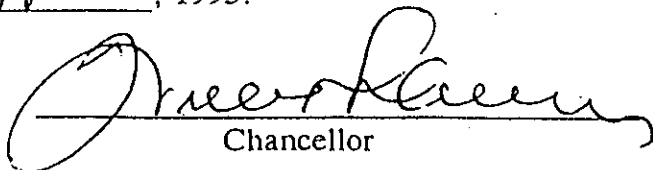
"IN THE MATTER OF THE LIQUIDATION OF
NATIONAL HERITAGE LIFE INSURANCE COMPANY"

26. This Court shall retain jurisdiction in this cause for the purpose of granting such other and further relief as this cause, the interests of the policyholders, creditors, stockholders of National Heritage and the public may require. The Receiver, or any interested party upon reasonable notice to the Receiver, may at any time make application for such other and further relief as either sees fit.

27. On or before June 30, 1996, the Receiver shall mail a Notice of Liquidation and Bar Date and a proof of claim form to all known claimants and creditors or persons or entities reasonably believed to be claimants or creditors of National Heritage, by first class mail, postage prepaid, and obtain proof of such mailing on United States Postal Form 3606.

28. ANY AND ALL CLAIMS AGAINST THE NATIONAL HERITAGE LIFE INSURANCE COMPANY IN LIQUIDATION NOT PRESENTED TO THE RECEIVER ON OR BEFORE JUNE 30, 1997 SHALL BE FOREVER BARRED FROM SHARING IN DISTRIBUTIONS OF THE ASSETS OF NATIONAL HERITAGE UNLESS THERE IS A SURPLUS AND NATIONAL HERITAGE IS DEEMED SOLVENT PURSUANT TO 18 DEL. C. §5928(a)(2).

SO ORDERED this 21 day of May, 1995.


Chancellor