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IN THE CIRCUIT COURT, SECOND
JUDICIAL CIRCUIT, IN AND FOR
LEON COUNTY, FLORIDA

IN RE: RECEIVERSHIP OF
CADUCEUS SELF INSURANCE FUND,
INC.,

CASE NO.: 00-04

ORDER APPROVING AND DIRECTING
THE ASSESSMENT OF FUND MEMBERS

THIS CAUSE came to be heard before this Court on January 2, 2003, upon Receiver's Report and Petition for Order Approving and Directing the Assessment of Fund Members ("Receiver's Petition"). After reviewing the pleadings of record, hearing presentation of counsel, and being otherwise fully advised in the premises, the Court finds as follows:

Background

1. This Court has jurisdiction over this delinquency proceeding and is authorized to make all necessary or proper orders to carry out the purposes of the Insurers Rehabilitation and Liquidation Act. § 631.021(1), Fla. Stat. (2002).

2. On or about November 25, 1975, the Caduceus Self Insurance Fund, Inc. ("CADUCEUS") was organized as a Florida not-for-profit corporation whose purpose was to form and operate a medical malpractice self insurance fund to pool the medical malpractice liabilities of its members.

3. CADUCEUS was organized pursuant to § 627.357, Fla. Stat., and Chapter 4-187, F.A.C. According to the terms of the Caduceus Professional Medical Liability Insurance Assessable Claims Made Policy ("Policy") and the Caduceus Self Insurance Fund, Inc. Mutual Covenants ("Mutual Covenants"), the members of CADUCEUS pooled their medical

malpractice liabilities under the direction of a board of trustees. Among other things, the members of CADUCEUS covenanted and agreed to pay into a fund premiums and assessments, determined by the trustees, out of which actual losses and expenses were to be paid. Moreover, the members of CADUCEUS agreed to make prompt payment of said premiums and assessments. Copies of the Policy and Mutual Covenants are attached to the Receiver's Petition as Composite Exhibit A.

4. On January 3, 2000, with CADUCEUS admitting insolvency, this Court ordered the liquidation of CADUCEUS and entered its Consent Order Appointing the Florida Department of Insurance as Receiver for Purposes of Liquidation, Injunction, and Notice of Automatic Stay (the "Liquidation Order").

5. The Liquidation Order appoints the State of Florida Department of Insurance as the Receiver of Caduceus ("RECEIVER") and authorizes and directs the RECEIVER to calculate (in the manner set forth in § 624.474, Fla. Stat. (2002)) any necessary assessments, and to use the collection procedure set forth in §§ 631.311, 631.321, and 631.331, Fla. Stat. (2002), or such other procedure as may be subsequently ordered by this Court. Liquidation Order, ¶10, p. 4.

6. Pursuant to paragraph Q of the Liquidation Order (p. 8), and in accordance with § 631.252, Fla. Stat. (2002), all insurance policies of CADUCEUS were canceled as of 11:59 p.m. on February 2, 2000, unless otherwise lawfully expired, terminated or cancelled on an earlier date.

Authority for the Receiver's Assessment of Caduceus' Fund Members

7. The RECEIVER is vested by operation of law with the title to all of the property, contracts, and rights of action of CADUCEUS. § 631.141(2), Fla. Stat. (2002). Thus, the RECEIVER acts as the successor of the trustees and holds the rights, causes, and remedies that were available to the trustees. *Southeastern Staffing Services Inc. v. Fla. Dept. of Ins.*, 728 So.2d 248 (Fla.1st DCA 1998); *Nova Insurance Group, Inc. v. Fla. Dept. of Ins.*, 606 So. 2d 429, 432 (Fla.1st DCA 1992).

8. As stated, pursuant to the terms of the Policy and Mutual Covenants of CADUCEUS, and in accordance with § 627.357(7)(c), Fla. Stat. (2002); the trustees, and the RECEIVER in the event of liquidation of the fund, may assess the members of CADUCEUS to cover contingent liabilities of the fund.

9. Section 631.311, Fla. Stat. (2002) provides that the RECEIVER may make and file its report and petition to this Court setting forth (1) the reasonable value of the assets of CADUCEUS, (2) the liabilities of CADUCEUS to the extent thus far ascertained by the RECEIVER, (3) the aggregate amount of the assessment, if any, which the RECEIVER deems reasonably necessary to pay all claims, the costs and expenses of the collection of the assessments, and the costs and expenses of the delinquency proceeding in full, and (4) any other information relative to the affairs or property of CADUCEUS that the RECEIVER deems material.

10. Section 631.321(1), Florida Statutes (2002), provides as follows:

> Upon the filing and reading of the report and petition provided for in s. 631.311, the court, ex parte, may order the department to assess all members or subscribers of the insurer who may be

> subject to such an assessment, in such an aggregate amount as the court finds reasonably necessary to pay all valid claims as may be timely filed and proved in the delinquency proceeding, together with the costs and expenses of levying and collecting assessments and the costs and expenses of the delinquency proceeding in full. Any such order shall require the department to assess each such member or subscriber for her or his proportion of the aggregate assessment, according to such reasonable classification of such members or subscribers and formula as may be made by the department and approved by the court.

11. Paragraph 21 of the Liquidation Order, authorizes and directs the RECEIVER to calculate any necessary assessments pursuant to Sections 624.474 and 624.476, Florida Statutes, and to utilize the assessment collection procedure set forth in Sections 631.311, 631.321, and 631.331, Florida Statutes, or such other procedure as may be subsequently ordered by this Court.

12. The assessment process set forth in §§ 631.311, 631.321, and 631.331, Fla. Stat., was approved in *In re The Receivership of International Forum of Florida Health Benefit Trust*, 607 So.2d 432 (Fla. 1st DCA 1992). A receiver's authority to assess the members of an insolvent self insurance fund was also upheld in *Southeastern Staffing Services, Inc. v. Fla. Dept. of Insurance,* 728 So.2d 248 (Fla. 1st DCA 1998).

Calculation of the Aggregate Assessment

13. The aggregate amount of the assessment shall be such amount as the Court finds reasonably necessary to pay all valid claims as may be timely filed and proved in the delinquency proceeding, together with the costs and expenses of levying and collecting the assessments and the costs and expenses of the delinquency proceeding in full. § 631.311(1), Fla. Stat. (2002).

14. Pursuant to § 631.311, Fla. Stat. (2002), the RECEIVER has reported that, as of October 31, 2002, the CADUCEUS receivership estate holds assets having a reasonable value of $5,285,331.00, comprised of $5,097,015.00 in cash, $27,228.00 in accrued interest receivable, and $161,088.00 in reinsurance recoverable net of allowance. A copy of the interim Statement of Affairs of the CADUCEUS receivership as of October 31, 2002, and a Statement of Cash Receipts and Disbursements from the date of liquidation through October 31, 2002, are attached to the Receiver's Petition as Composite Exhibit B.

15. The Court finds that there are insufficient assets in the CADUCEUS receivership estate to pay all valid claims as may be filed and proved in this delinquency proceeding, together with the costs and expenses of levying and collecting the assessment and the costs and expenses of the delinquency proceeding in full.

16. The Court finds that in order to pay all valid claims as may be filed and proved in the delinquency proceeding, together with the costs and expenses of levying and collecting the assessment and the costs and expenses of the delinquency proceeding in full, it is reasonably necessary for the receivership estate to recover an aggregate assessment in the amount of $15,581,798.00 to cover the claims and expenses incurred herein. This amount is comprised of the sum of (i) reserves for the RECEIVER's administrative expenses, (ii) reserves for claims and awards against CADUCEUS and related allocated loss adjustment expenses, (iii) the cost to levy and collect the assessment, (iv) an allowance for uncollectible assessments, and (v) an allowance for prompt payment, *less* (vi) assets of the receivership estate. A copy of the RECEIVER's Summary of Assessment, setting forth the established assessment formula, and the RECEIVER's Summary of Calculation of the Aggregate Amount of Assessment By Year are attached to

Receiver's Petition as Composite Exhibit C.

17. The RECEIVER analyzed and determined the reserves necessary to pay its administrative expenses and unallocated loss adjustment expenses. The reserves for claims and awards and for allocated loss adjustment expenses were analyzed and determined by an outside claims administrator and an actuary. The Court finds all such reserve determinations to be reasonable and in the best interest of the receivership estate.

18. The RECEIVER has determined the amount of the cost to levy and collect included in the aggregate assessment. The Court finds the RECEIVER's determination of such amount to be reasonable and in the best interest of the receivership estate.

19. The RECEIVER has also analyzed the uncollectibility of the assessment and has, based upon expert advice of its outside actuary, determined that more than twenty-nine percent (29%) of the assessment will be uncollectible from the assessed members of CADUCEUS. The Court finds the RECEIVER's determination of such uncollectibility factor to be reasonable and in the best interest of the receivership estate.

Calculation of Each Fund Member's Share of the Aggregate Assessment

20. Sections 624.474(2) and 627.357(7)(d), Fla. Stat. (2002), provide that each fund member's share of a deficiency for which an assessment is made shall be computed by applying to the premium earned on the fund member's policy during the period covered by the assessment the ratio of the total deficiency to the total premiums earned during such period upon all policies subject to the assessment. Section 631.321, Fla. Stat. (2002), further provides that the RECEIVER shall assess each fund member for the member's proportion of the aggregate assessment according to such reasonable classification of the members and formula as may be

made by the RECEIVER and approved by the Court.

21. From January 1, 1994 through December 31, 1998, approximately 1,300 fund members paid premiums to CADUCEUS and are liable for the assessment.

22. Each fund member's share of the assessment and each fund member's liability for assessment for each fund year are shown on the RECEIVER's computerized report (the "Receiver's Assessment Calculation By Insured"), attached as Exhibit D to the Receiver's Petition. As shown in the RECEIVER's Assessment Calculation By Insured, each fund member's share of the assessment is adjusted by the amount of previous payments and interest due, if any. The Court finds that the RECEIVER's determination of each fund member's share of the assessment and of each fund member's liability for the assessment for each fund year is correctly based upon reasonable classification of the members and formula, *viz.* the formula set forth in Section 624.474, Florida Statutes (2002).

Notice and Effect of Fund Members' Assessments

23. Any assessment of a fund member made by the RECEIVER pursuant to this Court's order fixing the aggregate amount of the assessment against the affected fund members and approving the classification and formula made by the RECEIVER shall be prima facie correct. § 631.331(1), Fla. Stat. (2002).

24. Such fund member must be notified of the amount of the assessment to be paid by the fund member, by written notice mailed to the fund member's address last of record with CADUCEUS or any subsequent revised address determined by the RECEIVER. However, failure of the fund member to receive the notice so mailed, within the time specified therein or at all, shall be no defense in any proceeding to collect the assessment. § 631.331(2), Fla. Stat.

(2002).

25. In the event that the fund member does not pay the assessment within the period specified in the notice, the RECEIVER may obtain an order of this Court requiring the fund member to show cause at a time and place fixed by the Court why a judgment should not be entered against the fund member for the amount of the assessment plus any costs incurred in the collection of the assessment. § 631.331(3), Fla. Stat. (2002).

26. The Court finds that the period specified in the notice for payment of the assessment shall be a date to be determined by the Receiver that is not less than 20 days after mailing of the notice.

27. In order to promote prompt and complete payment of the assessment by the fund members, the RECEIVER has recommended that each fund member be offered a discount equal to thirty-three and one-third percent (33-1/3%) of the fund member's share of the aggregate assessment if the fund member pays, or makes adequate provision acceptable to the RECEIVER for the payment of, such discounted share in full within the period specified in the notice for payment of the assessment, and that any fund member who so pays or provides for the payment of the discounted assessment on a timely basis shall be fully released from any additional assessment. The discount for prompt payment was considered by the actuary and factored into the calculation of the aggregate assessment. The Court finds such recommendation to be reasonable and in the best interest of the receivership estate.

IT IS, THEREFORE, ORDERED AND ADJUDGED as follows:

A. Approving and directing that the RECEIVER assess the fund members of CADUCEUS pursuant to the Policy and Mutual Covenants of the fund and §§ 627.357, 624.474,

624.476, and 631.311 through 631.331, Fla. Stat. (2002).

B. The Receiver's Assessment Calculation, which is attached to the Receiver's Petition as Composite Exhibit C, establishing the aggregate assessment as $15,581,798.00 and the classification and formula made by the RECEIVER, are hereby approved.

C. The RECEIVER shall assess all the fund members of CADUCEUS who have paid or were required to pay any premiums to CADUCEUS from January 1, 1994 through December 31, 1998.

D. The RECEIVER's Assessment Calculation By Insured, attached to the RECEIVER's Petition as Exhibit D, setting forth each fund member's share of the aggregate assessment and each fund member's liability for the aggregate assessment, is hereby approved.

E. The RECEIVER is hereby authorized and directed to provide to each fund member of CADUCEUS with a Notice of Assessment by regular U.S. mail to the last known address of the fund member, as shown in the RECEIVER's files obtained from CADUCEUS or any subsequent revised address as determined by the RECEIVER. Failure of the fund member to receive the notice so mailed, within the time specified therein or at all, shall be no defense in any proceeding to collect the assessment. § 631.331(1), Fla. Stat. (2002).

F. The RECEIVER is hereby authorized and directed to set a date for the payment of the assessment (the "Payment Due Date"), which date will be not less than 20 days after the date on which the Notice of Assessment is mailed. § 631.331(3), Fla. Stat. (2002).

G. Each Notice of Assessment shall be in writing, shall specify the amounts assessed, shall provide the RECEIVER's address where payments may be sent, and shall state the deadline by which each fund member shall pay, or make adequate provision acceptable to the RECEIVER

for the payment of, the assessment. Each such Notice of Assessment shall constitute notice of this Order approving and directing the assessment of the fund members of CADUCEUS.

H. The RECEIVER shall make available for copying by any fund member, at the fund member's expense, a copy of the following documentation: (i) any written report by the actuary concerning the reserve estimates used by the Receiver to calculate the assessment of the fund members, (ii) any written claims analysis used by the actuary in connection with the preparation of the actuarial report, and (iii) any other documentation concerning the RECEIVER's method for calculating the assessment. Notwithstanding the foregoing, the RECEIVER shall not provide copies of claims files, canceled checks, accounting ledgers, journal entries, expense reports, and similar documentation. In addition, at such time or times convenient to the Receiver, but not later than 10 days before the Payment Due Date, the RECEIVER shall make available for the taking of depositions by legal counsel of any fund members requesting discovery the actuary who prepared the actuarial report, as well as the other individuals employed by the RECEIVER to calculate the assessment.

I. The fund members shall pay, or shall make adequate provision acceptable to the RECEIVER for the payment of, the assessment by the Payment Due Date.

J. Each fund member shall be offered a discount equal to thirty-three and one-third percent (33-1/3%) of the fund member's share of the aggregate assessment if the fund member pays, or makes adequate provision acceptable to the RECEIVER for the payment of, such discounted share in full by the Payment Due Date. Any fund member who so pays or provides for the payment of the discounted assessment by the Payment Due Date (a "Paying Fund Member") shall be deemed to have irrevocably waived any and all claims or objections to the

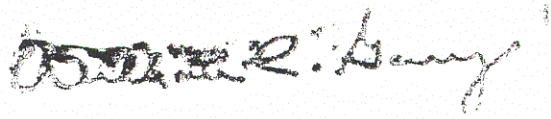
assessment (including, without limitation, any claims for refund or credit of the amount paid and any claims for setoff, offset, or recoupment against the assessment) and, upon complete, final, and timely payment in full of such discounted assessment (together with any interest or other charges thereon for any installment payments), shall be fully released from the Paying Fund Member's liability for the assessment (including liability for any additional or further assessment). The full proportionate share of the Paying Fund Member shall be deemed paid in full provided that the entire amount of the Paying Fund Member's discounted assessment is in fact completely, finally, and timely paid and is not subsequently refunded, credited, or otherwise returned. Any amount paid by a fund member under protest or with a claim for credit or refund of any such payment shall be considered a partial payment by the fund member against that member's proportionate share of the assessment and shall reduce the liability for the assessment by that amount actually paid for each applicable fund year, and the fund member shall remain liable for, and shall not be released from any liability for, the unpaid amount of the aggregate assessment regardless of the amount so paid under protest or with a claim for credit or refund

K. The RECEIVER may in its discretion accept from any fund member such lesser amount or different terms in settlement of the fund member's liability for assessment as the RECEIVER deems to be in the best interest of the CADUCEUS receivership estate.

L. Any fund member who is not a Paying Fund Member (see paragraph J, above) (a "Non-Paying Fund Member") shall not file objections to the assessment at this time. Upon further petition of the Receiver pursuant to Section 631.331, Florida Statutes (2002), the Court will enter an order to show cause why judgment should not be entered against Non-Paying Fund Members. Non-Paying Fund Members will receive subsequent notice of the procedures to be

followed to file and serve any written objections to the assessment and conduct of a hearing on any such objections.

DONE AND ORDERED in Chambers at the Leon County Courthouse, Tallahassee, Leon County, Florida, this 3rd day of January, 2003.



CIRCUIT JUDGE

Copies to:

Kevin Tang, Chief Counsel, Florida Department of Insurance, Division of Rehabilitation and Liquidation, Counsel for the Receiver
Carolyn S. Ansay, Doran, Wolfe, Rost & Ansay, Counsel for the Receiver