

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable G. Thomas Cooper, Jr., Circuit Court Judge

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Case No. 2014-CP-40-0313

APR 04 2016

Appellate Case No. 2016-000192

SC Court of Appeals

Raymond G. Farmer, as Director of the South Carolina
Department of Insurance, Petitioner,

v.

CAGC Insurance Company, in Liquidation, Respondent.

South Carolina Property and Casualty Insurance
Guaranty Association, Appellant,

v.

CAGC Insurance Company, in Liquidation; Raymond
G. Farmer, in his capacity as Ancillary Receiver of
CAGC Insurance Company, in Liquidation; and
CompTrustAGC of South Carolina a/k/a
CompTrustAGC of South Carolina, Inc., Respondents.

**INITIAL BRIEF OF RESPONDENT RAYMOND G. FARMER,
IN HIS CAPACITY AS ANCILLARY RECEIVER OF CAGC
INSURANCE COMPANY, IN LIQUIDATION**

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STATEMENT OF ISSUE ON APPEAL

- I. Did the supervising court err by dismissing CompTrustAGC of South Carolina a/k/a/ CompTrust AGC of South Carolina, Inc. from the Association's declaratory judgment action instead of allowing the Association to conduct discovery related to its assertion that it is not responsible for the Transferred Claims?

ARGUMENT

This appeal arises out of an action for declaratory judgment by the intervenor within an ancillary insurance company receivership. The Respondent Raymond G. Farmer is the Director of the South Carolina Department of Insurance in his capacity as the Ancillary Receiver of CAGC, an insurer in liquidation proceedings in North Carolina.

S.C. Code Ann. § 38-27-940 (2015) provides that if a domiciliary liquidator has been appointed for an insurer not domiciled in this State, the Director of the South Carolina Department of insurance or his designee may file a petition with the Court of Common Pleas (in Richland County) requesting appointment as ancillary receiver in this State, provided he finds that there are sufficient assets of the insurer located in this State to justify the appointment of an ancillary receiver or if the protection of creditors or policyholders in this State so requires. After the liquidation of CAGC in North Carolina, and in light of the Association's contention that it was not statutorily responsible for "Transferred Claims" this Respondent filed a petition for the ancillary receivership.

Pursuant to S.C. Code Ann. § 38-27-940, the Ancillary Receiver has the same powers and is subject to the same duties with respect to the administration of assets as if he were appointed the Liquidator of an insurer domiciled in this State. *Ins. Comm'n v. New South Life Ins. Co.*, 270 S.C. 612, 627-628, 244 S.E.2d 289, 297 (1978). The Insurance Law provides for the appointment of the Director as receiver in insurance insolvency matters because of expertise regarding the insurance industry as specified in S.C. Code Ann. § 38-3-10 (2015). *See New South Life*, 270 S.C. at 627-628, 244 S.E.2d at 297. He serves as an arm of the supervising court and, as such, is answerable to the court, as is a receiver in other ordinary insolvency matters. *Id.* The supervising court acts in a general

supervisory role, approving or disapproving the recommendations and actions of the receiver and resolving any disputes arising from conflicting interests of the various parties.

Id. It is in this official capacity that the Ancillary Receiver submits this brief.

This Respondent is substantially in agreement with Appellant's statement that the "sole issue before this Court is whether CompTrust AGC of South Carolina a/k/a CompTrust AGC of South Carolina, Inc. ('CompTrust') is a proper party to the declaratory judgment action brought by South Carolina Property and Casualty Insurance Guaranty Association ('Association')" in this ancillary receivership. Not at issue is whether, as a matter of law, the Association is or is not responsible under Chapter 29 of Title 38 for paying what Appellant calls the "Transferred Claims." The Appellant essentially acknowledges this in arguing it "should be allowed to continue with [its] action with CompTrust reinstated as a party so that the Association may fulfill its statutory obligation to fully investigate the claims CompTrust attempted to transfer to CAGC" and that it should be allowed "to conduct the discovery necessary to determine whether the [claims] transfer . . . was proper."

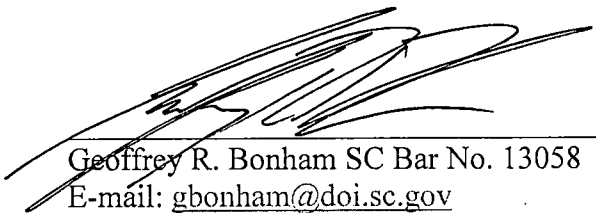
The Ancillary Receiver takes no issue with Appellant's general description and explanation of the provisions and operation of the South Carolina Life and Accident and Health Insurance Guaranty Law, S.C. Code Ann. §§ 38-29-10 *et seq.* He takes no position on whether (1) the lower court Order dismissing CompTrust improperly reversed a prior circuit court order, (2) the three-year statute of limitations does not support the dismissal of CompTrust, (3) dissolution does not insulate CompTrust from suit, or (4) the Association's claims are moot. This Respondent also agrees generally that the Association has a statutory duty to investigate claims asserted against the Association and the statutory

authority to bring suits to prevent collusion and fraud pursuant to, *inter alia*, S.C. Code Ann. § 38-31-60(d) (2015). To the extent Appellant might be understood to argue that it is entitled to judgment that, as a matter of law, it is not responsible the Transferred Claims, this Respondent submits that this is not an issue properly presented by the instant appeal. The Ancillary Receiver did not maintain in the court below that any party was entitled to judgment as a matter of law regarding any provision of the Insurance Law, and he does not make such an assertion before this Court.

The sole issue presented involves the interpretation of Titles 15 and 33 of the Code of Laws of South Carolina 1976, as amended, matters that do not implicate the Ancillary Receiver's "expertise regarding the insurance industry." In the court below, the Ancillary Receiver was not asked for and did not offer any opinion whatsoever on the application of Title 15 or the Corporation Code. Accordingly, this Respondent takes no position as to the arguments presented by Appellant as to whether the lower court, in granting CompTrust's motion to dismiss, properly applied the cited provisions of Titles 15 and 33.

CONCLUSION

Respondent takes no position as to the specific issue presented on appeal.



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