

STATE OF VERMONT

SUPERIOR COURT
WASHINGTON UNIT

COMMISSIONER OF THE)
DEPARTMENT OF FINANCIAL)
REGULATION)
PLAINTIFF,)
v.)
NEELEY INCORPORATED CELL,)
DEFENDANT.)

CIVIL DIVISION
DOCKET NO. 24-CV-00275

ORDER OF LIQUIDATION

This matter came before the Court on the Petition for Order of Liquidation for the Neeley Incorporated Cell (“Petition”), of the Commissioner of the Department of Financial Regulation (“Commissioner”) for an order of liquidation for the Neeley Incorporated Cell (“Neeley”) pursuant to 8 V.S.A. § 7055(a). In support of the Petition, the Commissioner filed the Affidavit of J. David Leslie, Special Deputy Commissioner, and Affidavit of Leslie Kaderavek, the Vice President of the company managing Neeley’s professional and general liability claims. Based on the evidence presented, the Court finds that an attempt to rehabilitate Neeley would be futile and would substantially increase the risk of loss to creditors, policyholders, or the public, and it is hereby ORDERED:

1. Appointment of Commissioner as Liquidator. Pursuant to 8 V.S.A. § 7057(a), the Commissioner, and any successor in the office of Commissioner, is hereby appointed the Liquidator of Neeley (the "Liquidator").

2. Liquidator to Take Possession of Assets. Pursuant to 8 V.S.A. § 7057(a), the Liquidator is directed forthwith to take possession of the assets of Neeley wherever located, and to administer those assets under the general supervision of this Court and pursuant to the terms of this Order and 8 V.S.A. ch. 145.

3. Title to Property and Assets. Pursuant to 8 V.S.A. § 7057(a), the Liquidator is vested by operation of law with the title to all of the property, contracts and rights of action, and to all of the books and records of Neeley, wherever located, as of the date of entry of this Order.

4. Accountings. Pursuant to 8 V.S.A. § 7057(e), within one year of this Order and at least annually thereafter the Liquidator shall file an accounting with the Court. The accountings shall include (at a minimum) the assets and liabilities of Neeley and all funds received or disbursed by the Liquidator during the current period.

5. Powers of the Liquidator. Pursuant to 8 V.S.A. § 7060:

A. The Liquidator shall have the power to:

i. Appoint a special deputy to act for the Liquidator and to determine reasonable compensation for the special deputy. The special deputy shall have all the powers of the Liquidator granted by this section. The special deputy shall serve at the pleasure of the Liquidator;

ii. Employ employees and agents, legal counsel, actuaries, accountants, appraisers, consultants, and such other personnel as may be deemed necessary by the Liquidator to assist in the liquidation;

iii. Fix the reasonable compensation of employees and agents, legal counsel, actuaries, accountants, appraisers and consultants with the approval of the Court;

iv. Pay reasonable compensation to persons appointed and to defray from the funds or assets of Neeley all expenses of taking possession of, conserving, conducting, liquidating, disposing of, or otherwise dealing with the business and property of Neeley. In the event that the property of Neeley does not contain sufficient cash or liquid assets to defray the costs incurred, the Commissioner may advance the costs so incurred out of any appropriation for the maintenance of the department. Any amounts so advanced for expenses of administration shall be repaid to the Commissioner for the use of the department out of the first available moneys of Neeley;

v. Hold hearings, subpoena witnesses to compel their attendance, administer oaths, examine any person under oath, and compel any person to subscribe to testimony after it has been correctly reduced to writing; and in connection with such proceedings, require the production of any books, papers, records or other documents which the Liquidator deems relevant to the inquiry;

vi. Audit the books and records of all agents of Neeley insofar as those records relate to the business activities of Neeley;

vii. Collect all debts and monies due and claims, belonging to Neeley, wherever located, and for this purpose:

a. institute timely action in other jurisdictions, in order to forestall garnishment and attachment proceedings against such debts;

b. do such other acts as are necessary or expedient to collect, conserve or protect its assets or property, including the power to sell, compound, compromise or assign debts for purposes of collection upon such terms and conditions as the Liquidator deems best; and

- c. pursue any creditor's remedies available to enforce the Liquidator's claims;
- viii. Conduct public and private sales of the property of Neeley;
- ix. Use assets of the estate of Neeley to transfer policy obligations to a solvent assuming insurer, if the transfer can be arranged without prejudice to applicable priorities,
- x. Acquire, hypothecate, encumber, lease, improve, sell, transfer, abandon, or otherwise dispose of or deal with, any property of Neeley at its market value or upon such terms and conditions as are fair and reasonable. The Liquidator shall also have power to execute, acknowledge, and deliver any and all deeds, assignments, releases and other instruments necessary or proper to effectuate any sale of property or other transaction in connection with the liquidation;
- xi. Borrow money on the security of Neeley's assets or without security and execute and deliver all documents necessary to that transaction for the purpose of facilitating the liquidation. Any such funds borrowed may be repaid as an administrative expense and have priority over any other claims in Class 1 under the priority of distribution;
- xii. Enter into such contracts as are necessary to carry out this Order, and affirm or disavow any contracts to which the insurer is a party;
- xiii. Continue to prosecute and institute in the name of Neeley or in the Liquidator's own name any and all suits and other legal proceedings, in this state or elsewhere, and abandon the prosecution of claims the Liquidator deems unprofitable to pursue further. If Neeley is dissolved, the Liquidator shall have the power to apply to any

court in this state or elsewhere for leave to substitute the Liquidator for Neeley as plaintiff;

xiv. Prosecute any action which may exist in behalf of the creditors, members, policyholders or shareholders of Neeley against any officer of Neeley, or any other person;

xv. Remove any or all records and property of Neeley to the offices of the Liquidator or to such other place as may be convenient for the purposes of efficient and orderly execution of the liquidation;

xvi. Deposit in one or more banks in this state such sums as are required for meeting current administration expenses;

xvii. Invest all sums not currently needed, unless the Court orders otherwise;

xviii. File any necessary documents for record in the office of any recorder of deeds or record office in this state or elsewhere where property of the insurer is located;

xix. Assert all defenses available to Neeley as against third persons, including statutes of limitation, statutes of frauds, and the defense of usury. A waiver of any defense by Neeley after a petition in liquidation has been filed shall not bind the Liquidator;

xx. Exercise and enforce all the rights, remedies, and powers of any creditor, shareholder, policyholder, or member, including any power to avoid any transfer or lien that may be given by the general law;

xxi. Intervene in any proceeding wherever instituted that might lead to the appointment of a receiver or trustee, and act as the receiver or trustee whenever the appointment is offered;

xxii. Enter into agreements with any receiver or commissioner of any other state relating to the liquidation or dissolution of Neeley if Neeley was doing business in both states; and,

xxiii. Exercise all powers now held or hereafter conferred upon receivers by the laws of this state not inconsistent with the provisions of 8 V.S.A. ch. 145.

B. The enumeration of the powers and authority of the Liquidator shall not be construed as a limitation upon the Liquidator, nor shall it exclude in any manner the Liquidator's right to do such other acts not herein specifically enumerated or otherwise provided for, as may be necessary or appropriate for the accomplishment of or in aid of the purpose of Neeley's liquidation.

6. Notice to Creditors and Others. Pursuant to 8 V.S.A. § 7061:

A. The Liquidator shall give or cause to be given notice of the issuance of this Order as soon as possible:

i. By first class mail and either by telecopier or telephone to the insurance commissioner of each jurisdiction in which Neeley is doing business;

ii. By first class mail to all insurance agents listed as agents of record on in-force policies as of December 31, 2023 or subsequently at their last known address as indicated by the records of Neeley;

iii. By first class mail to all persons known or reasonably expected to have claims against Neeley, including to all policyholders or third-party claimants, or through their counsel, at their last known address as indicated by the records of Neeley; and

iv. By publication in a newspaper of general circulation in the county in which Neeley has its principal place of business and in such other locations as the Liquidator deems appropriate.

B. The notice to potential claimants shall require claimants to file with the Liquidator their claims, together with proper proofs thereof pursuant to 8 V.S.A. § 7075 and this Order, before a date specified by the Liquidator in the notice, which must be no less than six months after the date of this Liquidation Order. All claimants shall have a duty to keep the Liquidator informed of any changes of address.

C. If notice is given in accordance with this section, the distribution of assets of Neeley under 8 V.S.A. ch. 145 shall be conclusive with respect to all claimants, whether or not they received notice.

7. Approval of the Plan of Liquidation. The Liquidator is authorized to implement the Plan of Liquidation attached to the Petition as Exhibit A, which is hereby found to be in the best interests of the policyholders of Neeley and the public.

8. Actions By and Against Liquidator.

A. Pursuant to 8 V.S.A. § 7063, upon issuance of this Order, no action at law or equity shall be brought against Neeley or the Liquidator, whether in this state or elsewhere, nor shall any such existing actions be maintained or further presented after issuance of such Order. Whenever, in the Liquidator's judgment, protection of the estate of Neeley necessitates intervention in an action against Neeley that is pending outside this state, the Liquidator may intervene in the action. The Liquidator may defend any action in which the Liquidator intervenes under this section at the expense of the estate of Neeley. Also, to the full extent of its jurisdiction hereunder and the comity afforded by

other courts, all actions at law or equity pending against Neeley's policyholders as of the date of this Order and being defended by Neely, are hereby stayed for sixty days from the date of this Order in order to give such policyholders an opportunity to arrange for their continuing defense.

B. Neeley, its officers, directors, trustees, agents, employees, and all other persons, are hereby enjoined and otherwise prevented from:

i. instituting or further prosecuting any actions or proceedings of any nature whatsoever, including matters in arbitration, against Neeley, its assets or the Liquidator or any Special Deputy;

ii. interfering with the Liquidator or with a proceeding under 8 V.S.A. ch. 145;

iii. causing waste of Neeley's assets;

iv. obtaining preferences, judgments, attachments, garnishments or liens against Neeley or its assets;

v. levying execution against Neeley or its assets;

vi. withholding from the Liquidator books, accounts, documents, or other records or information relating to the business of Neeley, or failing to preserve such material;

vii. any other threatened or contemplated action that might lessen the value of Neeley's assets or prejudice the rights of policyholders, creditors or shareholders, or the administration of the liquidation; or

viii. the setoff of any debt owing to Neeley; provided, however, that nothing herein shall prohibit the setoff of mutual debts or mutual credits in accordance with 8 V.S.A. § 7069.

9. Attachment, Garnishment and Levy of Execution. Pursuant to 8 V.S.A. § 7098, during the pendency in this or any other state of a Neeley liquidation, whether called by that name or not, no action or proceeding in the nature of an attachment, garnishment or levy of execution shall be commenced or maintained in this state against Neeley or its assets.

10. Effectiveness of Provisions of this Order. Each of the provisions of this Order of Liquidation shall be effective unless it is found by this Court in a proceeding expressly addressing the issue to be prohibited by 8 V.S.A. Ch. 145.

11. Retention of Jurisdiction. This Court shall retain jurisdiction for all purposes necessary to effectuate and enforce this Order.

12. Finality of Order. Notwithstanding the retention by this Court of jurisdiction under section 11 hereof, or any other provisions hereof, this is a Final Order.

13. Incorporation of Provisions of 8 V.S.A. ch. 145. To the extent that any applicable provisions of 8 V.S.A. ch. 145 are not explicitly incorporated in this Order of Liquidation, such provisions shall be deemed to be incorporated herein.

Dated at Montpelier, Vermont, this 6 day of March, 2024.

Electronically signed pursuant to V.R.E.P. 9(d).



Timothy K. Bonasi
Superior Court Judge