

IN THE CHANCERY COURT OF THE STATE OF TENNESSEE  
 TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY

STATE OF TENNESSEE, *ex rel.* LESLIE A. NEWMAN )  
 in her official capacity as COMMISSIONER OF )  
 COMMERCE AND INSURANCE, on behalf of )  
 the employees of Norwalk Furniture Corporation of )  
 Tennessee (aka Norwalk Wood Products Division) for )  
 Tennessee self-insured workers' compensation benefits, )

Petitioner, )

vs. )

MIDWEST EMPLOYERS CASUALTY COMPANY, )  
 A Missouri domiciled insurance company, and )  
 NORWALK FURNITURE CORPORATION OF )  
 TENNESSEE, A Tennessee domiciled corporation. )

Respondents. )

*Re: Bond for Workers' Compensation Self-Insurance of )  
 Norwalk Furniture Corporation of Tennessee – for claims )  
 incurred January 1, 1992 to July 1, 2007. )*

No. 09-384-III

FILED  
 2009 APR -2 PM 12:38  
 CLERK OF CHANCERY CT.  
 DAVIDSON COUNTY, TN  
 DCAW

ORDER REQUIRING BOND COMPANY TO PAY BOND PENALTY SUM AND TO  
 DISCHARGE BOND; AND FOR ADMINISTRATION OF BOND FUND, AND RELATED  
 INJUNCTIONS AND NOTICES

On April 2, 2009, this Court heard the matter of the Verified Petition of Leslie A. Newman, in her official capacity as Commissioner of the Tennessee Department of Commerce and Insurance, to obtain the maximum penalty sum of a bond issued by Midwest Employers Casualty Company, and to administer the bond funds for the use and benefit of the employees of Norwalk Furniture Corporation of Tennessee, (Norwalk/TN) the Cookeville employer that self-insured for its workers' compensation liability between January 1, 1992 and July 1, 2007. Counsel for the Commissioner and Counsel for Respondent Midwest Employers Casualty Company appeared at the hearing. MWECC has filed no opposition to the Verified Petition and has shown the Court that it agrees to the relief afforded herein.

WHEREFORE, based upon the Verified Petition, and the record in this matter, the Court FINDS as follows:

1. The Petitioner is Leslie A. Newman, in her official capacity as the duly appointed Commissioner of the Tennessee Department of Commerce and Insurance ("Commissioner") and holds the bond which is the subject of this action. The Commissioner has the exclusive right to enforce the bond: "Any legal actions to enforce the payment of the security being held for purposes of compliance with this section shall be brought by the [Commissioner] for the benefit of the employees of the self-insured employer." Tenn. Code Ann. § 50-6-405(b)(1)(A). The Commissioner brings this action under Tenn. Code Ann. § 50-6-405(b)(1) on behalf of the Tennessee employees of Norwalk Furniture Corporation of Tennessee ("Norwalk/TN") who may be entitled to workers' compensation benefits self-insured in Tennessee. Those persons will be enabled by this case to seek recourse against the bond.

2. The Respondent is Midwest Employers Casualty Company ("Bond Company" or "MWECC"), a corporation authorized to issue bonds and insurance policies in Tennessee, and domiciled in Missouri, which issued the bond B002TN for the Tennessee employer attached to the Verified Petition as Collective Exhibit A, that is to be administered as a result of this action.

3. Respondent Norwalk Furniture Corporation of Tennessee ("Norwalk/TN") is a Tennessee corporation with its principal place of business and registered office at 1100 S. Willow Avenue, Cookeville, Tennessee, 38502. It has done business under the name Norwalk Wood Products Division. Norwalk/TN has proved unavailable to be served at either of its registered addresses with the Department or with the Tennessee Secretary of State's Office.

4. This Court has jurisdiction for purposes of enforcing this statutory bond and granting an injunction and affording any equitable relief related to administering the bond held

by the Commissioner for purposes of workers' compensation self-insurance in Tennessee. Venue is exclusive to this county for any matter of enforcement of the security for Tennessee workers' compensation self-insurance pursuant to Tenn. Code Ann. § 50-6-405(b)(1)(C).

5. Respondent Norwalk/TN had been an employer approved to self-insure under Tenn. Code Ann. § 50-6-405 which posted the MWECC bond and was named as a party to this case, for the purpose of declaring its default in fulfilling its workers' compensation self-insured obligations. Norwalk/TN operated a single plant in Cookeville which has been shut down. Norwalk/TN is a subsidiary of Norwalk Furniture Corporation (NFC), which commenced a bankruptcy no-asset liquidation proceeding in October 3, 2008, in the United States Bankruptcy Court for the Northern District of Ohio, *In re: Norwalk Furniture Corporation*, Chapter 7, Case No. 08-35222. Counsel for the Commissioner contacted the trustee's counsel for NFC, Louis Yoppolo, who has stated that liquidation proceedings of the parent company do not encompass Norwalk/TN, and that the automatic stay does not apply to Norwalk/TN or protect proceedings as to the bond for Norwalk/TN. The NFC trustee has no objection to the initiation of this bond case, nor any request to be given copies of pleadings, as the subsidiary is not part of that proceeding. But, no assets appear to remain available, and no funds have been provided for claims payment or resolution from Norwalk/TN.

6. Norwalk/TN's third-party administrator, Brentwood Services Administrators, Inc., of Brentwood, Tennessee, was previously retained to administer run-off of the self-insured claims since July 1, 2007, but has been denied any funds for actual benefits by Norwalk/TN since the bankruptcy filing of the parent company.

7. The Commissioner declared Norwalk/TN to be impaired for failure to pay its claims under the Administrative Order, January 27, 2009, of Commissioner, (exhibit B to the

Petition). Due attempt to give notice to Norwalk/TN of its default giving rise to the bond liability, and of an opportunity to respond, has been made, and the Court finds that further efforts to involve Norwalk/TN are likely to be fruitless. This case should proceed upon a finding that Norwalk/TN has defaulted in its workers' compensation obligations and that recourse to the MWECC bond is warranted on these facts. Under Tennessee rules of the Department of Commerce and Insurance and law, Norwalk/TN is an "impaired employer" justifying the State's recourse to the MWECC Bond. Further the parties need certain equitable relief to aid the administration of the Bond.

8. Service of Petition on Norwalk/TN: Petitioner certified that attempts were made to send the summonses and complaint to Respondent Norwalk Furniture Corporation of Tennessee to be delivered certified mail return receipt. Process was sent to both addresses of record for the self-insured corporation according to the records of the Department of Commerce and Insurance. Both of these packages were returned to sender as undeliverable with notations "moved, left no address" "refused/unclaimed" and/or "unable to forward" as reflected on the returns of service filed by Petitioner. According to Tenn. Code Ann. § 50-6-405(b)(5) in the workers' compensation insurance and self-insurance statute, service by certified mail at the address of record for any notice, order, petition or complaint by the Commissioner under this section is deemed to constitute actual service on the self-insured employer. Norwalk Furniture Corporation of Tennessee's failure to operate or take mail at the registered addresses is further evidence that it has ceased business, and is not fulfilling its workers' compensation obligations. The Court finds that Petitioner has made actual service according to the governing law, and thus sufficient attempts at service for purposes of granting the relief sought by the Verified Petition.

9. Notice to Persons with Open/Active Workers' Compensation Claims: While potentially more employees may become interested or require recourse to the Bond Funds, the four (4) employees of Norwalk/TN with active open claims, or their counsel, have received copies of the Verified Petition and the initial order to show cause and amended hearing order. These claimants all are represented by counsel. Two claimants had scheduled trials in late February for their workers' compensation matter, but defense counsel for Norwalk/TN reportedly informed their counsel and believed that the bankruptcy stayed the proceedings. The claimants filed no opposition to commencing an administration of the Bond.

10. The Commissioner's suit is proper to require that MWECC immediately tender to the Commissioner on behalf of the State of Tennessee, the maximum penal sum of the Bond B002TN described in the Verified Petition, \$500,000.00, securing the outstanding workers' compensation obligations of the principal on the Bond penalty, Respondent employer Norwalk Furniture Corporation of Tennessee ("Norwalk/TN") from its self-insurance period (1992 through June 2007). MWECC already has tendered \$7,500.00 to the Commissioner out of the Bond to meet certain immediate unpaid expenses, leaving the outstanding amount of the bond penalty as \$492,500.00. The Commissioner has paid some expenses from the bond proceeds to date as certified for her by Norwalk/TN's third-party claims administrator Brentwood Services Administrators, Inc. Upon MWECC's payment of the maximum penal sum of the Bond to the Commissioner, applicable law provides that MWECC will be fully and finally released from any further obligation on the bond and its obligations will have been satisfied.

11. Norwalk/TN's employer liabilities now must be paid or furnished out of the resulting Bond Fund in lieu of the employer, and legal activities must be undertaken to determine those liabilities. The Court declares that these circumstances require payment of the Bond and

for this Court to take jurisdiction of the funds. Any and all other actions attempting enforcement against the Bond must be barred to prevent inconsistent claims on the fund.

12. LPT - The Court finds that the Commissioner should pursue her preferred plan for administration of the resulting Bond Fund. The Court approves, as set forth below, the Commissioner's authority to negotiate and present for approval to this Court a loss-portfolio transfer transaction as a means to administer the Bond Fund to shift any and all potential obligations of the Bond Fund under the Commissioner, and all recoveries to which it may be entitled under Norwalk/TN's excess policies and subrogation rights as an employer, to an authorized workers' compensation insurer through a loss portfolio transfer to cover all the remaining and outstanding claims of the run-off of Norwalk/TN's self-insured period, by using the proceeds of the Bond. If that transaction is not approved, the Commissioner will move the Court for an alternative plan of administration, such as long-term receivership or other administrator to be appointed for the Bond Fund.

13. Also, the Court finds there is good cause for a stay pending the adoption of any plan, to postpone any proceedings or final settlements respecting Norwalk/TN's workers' compensation obligations until the Bond Fund administration is fully operational with the ability to act for, bind and expend the Bond Funds. The Commissioner, pending the approval of any plan, requires continued authority to expend Bond Funds for administration and required temporary disability and ongoing medical care to which workers may be entitled under workers' compensation law.

WHEREFORE, THIS COURT ORDERS AND DECREES AS FOLLOWS.

A. This Court declares that a default by Norwalk/TN, the employer, has occurred giving rise to Bond liability on the MWECC Bond B0002TN attached to the Petition, and Respondent MWECC is liable to make payment to the Commissioner for the benefits and

administration of benefits up to the penal sum of the MWECC Bond, payable to the Commissioner pursuant to Tenn. Code Ann. § 50-6-405(b).

B. This Court declares that Bond Company Respondent MWECC has not yet paid the penal sum of its bond to the State, in the amount of \$500,000.00 and declares that MWECC upon such payment to the Commissioner of amounts totalling \$500,000.00 will be accordingly released and fully discharged from any further liability upon the MWECC Bond.

C. This Court declares that MWECC Bond proceeds and the resulting Bond Fund shall only be available for the administration and provision of benefits under workers' compensation law for Norwalk/TN's Tennessee self-insured claims incurred (by dates of injury) during the period from January 1, 1992 (12:01 a.m.) to July 1, 2007 (12:01 a.m.) when Norwalk/TN obtained workers' compensation insurance coverage.

D. This Court orders MWECC to immediately turn over the penal sum \$500,000.00 of the MWECC Bond, less the dollar amounts previously paid to the Commissioner under the administrative order, \$7,500.00, for a remaining sum of \$492,500.00 (Four Hundred Ninety-Two Thousand, Five Hundred Dollars), to the Commissioner of Commerce and Insurance, to be deposited at interest for the use of and pending the outcome of the claims administration in this case, which shall be the "Bond Fund." Upon MWECC's payment of such maximum penal sum of the Bond as stated herein, the Commissioner shall report the payment to this Court, and shall execute and deliver to MWECC a release of the Bond citing this Order.

E. This Court orders that the Bond Fund and anyone administering proceeds of the Bond or as successor to the Bond, succeeds to all the rights that the employer Norwalk/TN would have to recover on any specific or aggregate excess insurance policies obtained by Norwalk/TN for the benefit of the employees covering high-cost claims and losses, to third-party and subrogation recoveries on amounts that it pays or paid, and to claim the same position as Norwalk/TN with respect to the Tennessee Second Injury Fund, if applicable to a claim. The Bond Fund and anyone administering proceeds of the Bond or as successor to the Bond shall access any such third party recoveries to which an insurer or employer would be entitled in cases where such insurer/employer makes payments and a third party is liable to reimburse the insurer/employer.

F. Injunction. This Court orders that the covered employees and any other individuals or entities who do or could make claim on the Bond Funds, who receive notice of the Order, be restrained and permanently enjoined from instituting any action, levy, attachment, or proceeding with any pending action, against the State, the Commissioner, Norwalk/TN, MWECC or the Bond Funds seeking satisfaction of their claims in any way against the Bond Funds, except as such claims are allowed in this proceeding in accordance with this order or any subsequent order of this Court. The procedures authorized under this administration of the bond will be the sole and exclusive source to claimants for enforcement of the MWECC Bond that was filed with the Commissioner.

G. This Court orders Norwalk/TN, its agents, officers, or other persons, acting for it, to be restrained and enjoined from purporting to bind itself to any judgments or settlements and from taking any actions with respect to its workers' compensation liabilities which may harm the administration of the Bond Fund in this case. Norwalk/TN, its agents, officers, or other persons acting for it, shall provide the Commissioner and any successor administering the Bond Fund notice of any activities or events or legal actions of which they become aware that may affect its workers' compensation obligations.

H. Cooperation. The Court orders any administrators for Norwalk/TN, its attorneys and any attorneys representing injured workers and the workers themselves to fully cooperate with the Commissioner and the Bond Fund in all respects, including turning over or furnishing requested records, including workers' compensation activities and medical records, that are necessary to assist the administration of the Bond Fund.

I. The Court immediately authorizes the Commissioner as Administrator of the Bond Fund to use Bond Fund proceeds turned over to continue furnishing and administering temporary medical and ongoing disability benefits due to employees pending consummation of any Plan of Administration.

J. This Court approves, as an initial Plan of Administration, the immediate use and administration of Bond Fund, by which the Commissioner is empowered to negotiate for a Loss Portfolio Transfer of the Bond Funds liabilities and rights, and to present by Motion any LPT for which she seeks approval, together with such orders of administration as should accompany the approval of this transaction. The Commissioner's motion may be brought on the motion docket or by special setting once Bond proceeds are received by the Commissioner, and may be brought on fewer than 14 days' notice to facilitate a prompt determination of the LPT transaction.

K. If such Loss Portfolio Transfer is not approved, alternatively, this Court permits the Commissioner to file and move the court for a full plan of administration of the Bond Fund within a period to be determined, so as to propose an administrator, or receiver, and any other terms necessary to assist the orderly administration.

L. Any state workers' compensation actions or proceedings with respect to self-insured claims of Norwalk/TN's employees are temporarily stayed pending either the consummation of a Court-approved LPT transaction, or entry of Court order establishing an alternative administration of all claims against the Bond Fund.

M. The claimants with open claims, through their attorneys, shall be served copies of the Commissioner's administration motions and this Order. The Court reserves for later determination the manner and content of notices or publication to prior Norwalk/TN workers' compensation claimants with closed, that will reflect this court's determination of approval for an LPT transaction or alternative administration of the Bond Fund.

N. The Commissioner may seek from this Court instructions as to any matter with respect to the Bond Fund. If any question arises as to the coverage of the bond fund period or as

to a given claimant, this shall be determined by this Court. If any funds are to remain at the conclusion of this matter, the Petition shall give notice to MWECC as to any question of the disposition of such funds.

EHC

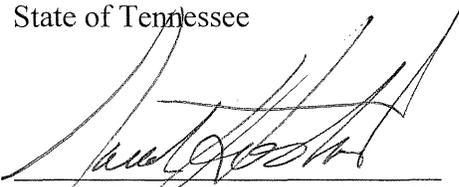
*The Court schedules a status conference for Friday, May 15, 2009, at 9:00a-m*  
IT IS SO ORDERED. *for counsel to update*

\_\_\_\_\_  
CHANCELLOR

Approved for entry by:

ROBERT E. COOPER, JR. (10934)  
Attorney General & Reporter  
State of Tennessee

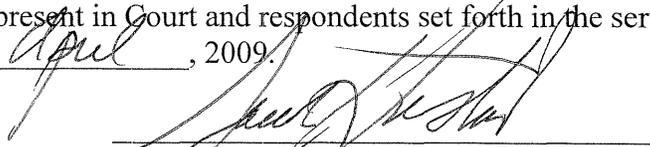
*The Court on the status of the LPT, the administration and disposition of the claims of the employees in issue and all other developments.*



SARAH A. HIESTAND (14217)  
Senior Counsel  
Office of the Attorney General  
Financial Division  
P. O. Box 20207  
Nashville, TN 37202-0207  
(615) 741-6035 fax 532-8223  
Attorney for Petitioner Leslie A. Newman  
Commissioner of the Tennessee Department  
of Commerce and Insurance

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Order is being served by mail on the interested parties, or delivered to any such parties as are present in Court and respondents set forth in the service list following on this the 2nd - day of April, 2009.

  
SARAH A. HIESTAND

Notice/ Service list  
Aubrey L. Brown, Esq.  
Glankler Brown  
One Commerce Square, Ste 1700  
Memphis, TN 38103  
Direct Dial 901-576-1710  
[abrown@glankler.com](mailto:abrown@glankler.com)

*Counsel to Respondent MWECC*

Thomas L. Sandifer  
Claims Attorney  
Midwest Employers Casualty Company  
14755 North Outer Forty Drive, Suite 300  
Chesterfield, MO. 63017  
Direct Dial 636-449-7148  
[Tsandifer@mwecc.com](mailto:Tsandifer@mwecc.com)

Norwalk Furniture Corporation of Tennessee  
ATTN: George Elmer, Registered Agent and President  
1100 S. Willow Avenue  
Cookeville, TN 38501-4139 Secretary of State Registered Agent  
Ph. – 931-432-4171, fax 931-432-4176 *Address unable to receive mail*

Norwalk Furniture Corporation of Tennessee  
P.O. Box 3067  
Cookeville, TN 38502-3067  
Ph. – 931-432-4171, fax 931-432-4176 Official Address of record with Department  
Tenn. Code Ann. § 50-6-405(b)(5)  
*Address unable to receive mail*

INTERESTED NON PARTY:

Brentwood Services Administrators, Inc.  
104 Continental Place, Suite 200  
Brentwood, Tennessee 37027  
ATTN: Everett Sinor  
(615) 263.1300 (telephone)  
(615) 263.1301 (fax)  
[Everett.Sinor@bwood.com](mailto:Everett.Sinor@bwood.com)

*Norwalk/TN's Third Party Administrator*

Craig P. Fickling, Esq.  
Fickling & Madewell  
118 E. First St.  
P.O. Box 1483  
Cookeville, TN 38503  
Phone 931-528-6403; fax 931-520-1628  
*Attorney for claimant employees Darrell Denney, Clarence Grider and John Shock*

David Day, Esq.  
Law Office of David Day, PC  
19 South Jefferson Ave., Suite 100  
Cookeville, TN 38501  
931-528-7002, fax 931-372-8280; [david@daviddaypc.com](mailto:david@daviddaypc.com)  
*Attorney for claimant employee Kenneth D. Lane*

Dan Rader, Esq.  
Moore, Rader, Clift & Fitzpatrick  
46 North Jefferson Avenue  
P.O. Box 3347  
Cookeville, TN 38502-3347  
Phone: 931-526-3311, fax 931-526-3092  
[danrader@citlink.net](mailto:danrader@citlink.net)  
*Norwalk/TN's defense counsel in workers' compensation cases.*