

**BEFORE THE INSURANCE COMMISSIONER
FOR THE STATE OF ARKANSAS**

**IN THE MATTER OF
RESERVE CAPITAL CORPORATION;
RESERVE CAPITAL LIFE INSURANCE COMPANY;
and DON CAVENAUGH MOTORS, INC.**

AID ORDER # 2016- 058

CONSENT ORDER

WHEREAS, the Arkansas Insurance Department (“AID”), and Reserve Capital Corporation, Reserve Capital Life Insurance Company, and Don Cavanaugh Motors, Inc., (hereafter, “Respondents”) have entered into this administrative Consent Order which has been reviewed and approved by the Arkansas Insurance Commissioner (“Commissioner”):

GENERAL STIPULATIONS

1. On or about November 13, 2015, Respondents filed a lawsuit against AID and the Commissioner in Pulaski County Circuit Court in case # 60CV-15-5611 (the “Lawsuit”) in which Respondents requested various declaratory and injunctive relief pertaining to AID’s interpretation of “successors in interest” under Ark. Code Ann. § 23-87-117(c) and Arkansas Insurance Department Rule 12.

2. On or about May 19, 2016, the Respondents, AID, and the Commissioner (the “Parties”) executed a written settlement agreement fully resolving the interpretation issues in the Lawsuit (“Settlement Agreement”).

FINDINGS OF FACT

3. The Commissioner has authority to enter into this agreement and issue this Order under Ark. Code Ann. § 23-61-103. The Commissioner has jurisdiction over the activities, sale and compensation related to the sale of credit life and disability insurance in this State under Ark. Code Ann. § 23-87-101 et seq.

CONCLUSIONS OF LAW

4. AID and the Commissioner agree to the provisions in the Settlement Agreement and hereby adopt and incorporate the terms of the Settlement Agreement into this Order, a copy of which is attached to this Order and is incorporated in full by reference. Respondents also agree to the provisions in this Settlement Agreement, and therefore all Parties consent to the entry of this Order.

ORDER

NOW THEREFORE, on the basis of the foregoing, the Parties have consented to the entry of this Order, and the following Order is appropriate and in the public interest.

IT IS HEREBY ORDERED that:

1. The Settlement Agreement executed by the Parties on or about May 19, 2016 is hereby adopted and incorporated by reference into this Administrative Order.

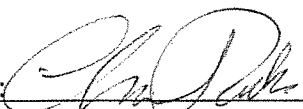
IT IS SO ORDERED, DIRECTED AND AGREED TO AS OF THE 14th DAY OF June, 2016.



ALLEN KERR
INSURANCE COMMISSIONER
STATE OF ARKANSAS

Date: 6-14-16

RESPONDENTS:

By:  75-099
Position: Attorney for all Respondents
Date: 6/13/2016

SETTLEMENT AGREEMENT

This Settlement Agreement (this "Settlement Agreement") is entered into between the Arkansas Insurance Department ("AID"), Reserve Capital Corporation ("Reserve Capital"), Reserve Capital Life Insurance Company ("RCLIC"), and Don Cavanaugh Motors, Inc. ("DCM"), each a "Party," and collectively, the "Parties."

WITNESSETH:

WHEREAS, AID is an executive branch agency of the State of Arkansas, and Allen Kerr is presently the Arkansas Insurance Commissioner ("Commissioner Kerr");

WHEREAS, Reserve Capital is an Arkansas corporation that owns all of the issued and outstanding shares of capital stock of RCLIC;

WHEREAS, RCLIC is an Arizona-domiciled credit life and disability insurer that is wholly-owned by Reserve Capital;

WHEREAS, DCM is an Arkansas corporation and a shareholder of Reserve Capital;

WHEREAS, the shareholders of Reserve Capital sell credit life and credit disability insurance in the ordinary course of their businesses, through an unrelated insurance company for which the shareholders are licensed agents, and RCLIC reinsures that credit life and credit disability insurance;

WHEREAS, as a result of their ownership of stock in Reserve Capital, Reserve Capital's shareholders may receive dividends or an increase in the value of their stock due to profits realized by RCLIC through reinsurance premiums and underwriting profits;

WHEREAS, Ark. Code Ann. § 23-87-117 and AID Rule and Regulation 12 ("Rule 12") establish the maximum compensation that can be paid to certain categories of persons (specifically, "an agent, a broker, or a creditor or any affiliate, associate, subsidiary, director, officer, employee, or other representative of or for the creditor") for writing or handling credit life or credit disability insurance;

WHEREAS, Ark. Code Ann. § 23-87-117(b) provides that certain items are not deemed "compensation" for purposes of the compensation limits (i.e., the maximum compensation) under Ark. Code Ann. § 23-87-117 and Rule 12, specifically, "reinsurance premiums paid to, or underwriting profits generated by, an insurer or reinsurer owned by, controlled by, or under common control with a credit insurer, an agent, broker, creditor, group of creditors, or any affiliate, associate, subsidiary, director, officer, employee, or other representative of, or for such a credit insurer, creditor, group of creditors, on accounts in existence with such an insurer or reinsurer on January 17, 1989, that have been registered with the commissioner within twenty (20) days of July 3, 1989, in accordance with pertinent rules and regulations promulgated by the commissioner;"

WHEREAS, Ark. Code Ann. § 23-87-117(c) further provides that "any and all payments to all direct and indirect successors in interests whether through purchase, gift, devise, or otherwise, related to all accounts registered under this section shall also not be deemed compensation" for

purposes of the compensation limits (i.e., the maximum compensation) under Ark. Code Ann. § 23-87-117 and Rule 12;

WHEREAS, all Reserve Capital shareholders own accounts that are associated with their stock in Reserve Capital and that are the type of “accounts” described in Ark. Code Ann. § 23-87-117(b) (each such account, an “Account,” and all such accounts, collectively, the “Accounts”);

WHEREAS, all Reserve Capital shareholders at the times described in Ark. Code Ann. § 23-87-117(b) duly and properly registered their Accounts with the Arkansas Insurance Commissioner pursuant to and in accordance with the requirements of Ark. Code Ann. § 23-87-117(b) and Rule 12 (each such Account, a “Grandfathered Account,” and all such Accounts, collectively, the “Grandfathered Accounts”);

WHEREAS, subsequent to the registration of all the Grandfathered Accounts by the Reserve Capital shareholders at the time, some of those shareholders transferred their Reserve Capital stock to others, and in some cases those transferee shareholders transferred their Reserve Capital stock to others;

WHEREAS, there are presently thirty-two (32) shares of Reserve Capital stock issued and outstanding, all of which are associated with Grandfathered Accounts owned by the shareholders that own such stock;

WHEREAS, on December 31, 1996, AID issued Bulletin 8-96, “Rule and Regulation 12, ‘Credit Life and Disability Insurance; Compensation to Successors in Interest’” (the “Bulletin”), which provided that for purposes of Rule 12 (and by necessary implication, Ark. Code Ann. § 23-87-117(b)-(c)), a successor in interest to a Grandfathered Account “is limited to a situation where the new account through purchase, gift, devise or otherwise is operating substantially the same business in the same location;”

WHEREAS, Reserve Capital subsequently challenged the Bulletin, and in a negotiated compromise between AID and Reserve Capital, on August 4, 1997, former AID Deputy Commissioner and General Counsel, Robert D. Ridgeway, Jr., issued a letter to Reserve Capital (the “Ridgeway Letter”) which interpreted the terms “direct successor” and “indirect successor” as those terms are used in Ark. Code Ann. § 23-87-117(b)-(c), specifically interpreting an “indirect successor” of a Grandfathered Account to be “a shareholder who acquires the stock from a former shareholder, but not necessarily in connection with the acquisition of the former shareholder’s business;”

WHEREAS, subsequent to the issuance of the Ridgeway Letter and in reliance thereon, Reserve Capital shareholders have transferred Reserve Capital stock with associated Grandfathered Accounts to successor shareholders, including automobile dealers and banks, without the transferee shareholder acquiring the business of the transferor shareholder;

WHEREAS, on November 20, 2015, former Insurance Commissioner Jay Bradford issued a letter expressing an intention to follow the Bulletin (the “Bradford Letter”);

WHEREAS, on June 15, 2015, Commissioner Kerr issued a letter expressing an opinion concerning “successors in interest” for purposes of Ark. Code Ann. § 23-87-117(b) and Rule 12 and stating that AID would follow the Bulletin so that to be considered a “successor in interest” of a

Grandfathered Account, the transferee would have to purchase or acquire the transferor's business (the "Kerr Letter");

WHEREAS, Reserve Capital determined that the Bradford Letter and the Kerr Letter presented a serious impediment to its ability to continue in business, jeopardizing the validity of previous transfers of its stock as well as preventing future transfers that would qualify as "indirect successors in interest" to Grandfathered Accounts, and preventing the fronting company whose business Reserve Capital reinsures from licensing new shareholders;

WHEREAS, on November 13, 2015, Reserve Capital, RCLIC and DCM filed suit against AID and Commissioner Kerr in Pulaski County Circuit Court in case # 60CV-15-5611 (the "Lawsuit"), in which Reserve Capital, RCLIC and DCM request various declaratory and injunctive relief pertaining to AID's interpretation of "successors in interest" under Ark. Code Ann. § 23-87-117(c) and Rule 12, as set forth in the Bulletin and well the Kerr Letter;

WHEREAS, Reserve Capital, RCLIC and DCM maintain that Ark. Code Ann. § 23-87-117(c), as well as the Ridgeway Letter, permit a Grandfathered Account holder to validly and legally transfer Reserve Capital stock and the associated Grandfathered Account to an "indirect successor in interest" without a requirement that a transferring shareholder also transfer its business, or transfer its "same business in the same location," to a transferee shareholder, and that they have reasonably and justifiably relied upon the Ridgeway Letter to permit Reserve Capital shareholders to transfer their stock and associated Grandfathered Account to transferees without a transfer of the transferor's business;

NOW THEREFORE, AID, Reserve Capital, RCLIC and DCM, in consideration of the mutual promises set forth in this Settlement Agreement, the receipt and sufficiency of which consideration are hereby acknowledged, agree as follows:

1. "Indirect Successor in Interest." For purposes of this Settlement Agreement, the term "indirect successor in interest" means a transferee of stock of Reserve Capital that acquires such stock from a shareholder of Reserve Capital, but not necessarily in connection with the acquisition of the transferor shareholder's business. For purposes of this Settlement Agreement, the Parties agree that this meaning qualifies such a successor shareholder to be an indirect successor in interest under Ark. Code Ann. § 23-87-117(c), and constitutes a valid "successor in interest" under Ark. Code Ann. § 23-87-117(c) and Rule 12 Section 14(3)(c), exempt from the compensation limits established under Rule 12 to the extent such transfer satisfies the restrictions or limitations in this Settlement Agreement.

2. Relationship of Stock and Accounts. For purposes of this Settlement Agreement, each Grandfathered Account shall be associated with a share of stock of Reserve Capital, and shall be transferable only in connection with a transfer of such stock, but shall not be transferable separate and apart from such stock.

3. Past "Indirect Successor in Interest" Transfers. AID approves all transfers of stock of Reserve Capital by shareholders of Reserve Capital to indirect successors in interest between August 4, 1997, until the effective date of this Settlement Agreement, as valid transfers to successors in

interest under Ark. Code Ann. § 23-87-117(c) and Rule 12 Section 14(3)(c), even though a transferee shareholder did not acquire the business of the transferring shareholder.

4. Future “Indirect Successor in Interest” Transfers. For purposes of transfers of Reserve Capital stock and associated Grandfathered Accounts after the effective date of this Settlement Agreement, AID agrees to interpret the compensation limits or restrictions in Rule 12 to recognize an exemption from the term “compensation,” and thus the 40% compensation cap, for reinsurance premiums paid to and underwriting profits generated by RCLIC and Reserve Capital for shareholders of Reserve Capital with Grandfathered Accounts, and direct and indirect successors in interest to those Grandfathered Accounts, recognizing that dividends paid by Reserve Capital to its shareholders and increases in the value of Reserve Capital stock may be attributable to reinsurance premiums paid to RCLIC and underwriting profits generated by RCLIC. This interpretation is however subject to the following limitations: (1) the transferee shareholder’s exempt compensation is solely limited to dividends from and increases in stock value of Reserve Capital, and this limitation or restriction is agreed to by the transferee shareholder; (2) no Reserve Capital shareholder with an associated Grandfathered Account may separately transfer its Grandfathered Account, or any right or interest therein, to a person or organization unless the interest or right is conveyed through a transfer of Reserve Capital stock subject to these provisions and Reserve Capital’s bylaws; (3) the transfers of Reserve Capital stock and associated Grandfathered Accounts subject to this Settlement Agreement are limited to shareholders that are successors of previously issued Reserve Capital stock and associated Grandfathered Accounts, and Reserve Capital is not by virtue of this Settlement Agreement authorized to issue additional stock or additional shares entitled to a grandfathered exemption but instead is limited to the thirty-two (32) shares presently outstanding and their associated Grandfathered Accounts, all of which are agreed to have been in existence prior to January 17, 1989, and duly registered with the Insurance Commissioner; and (4) the Rule 12 40% compensation cap is complied with for agent commission or compensation for policies reinsured by RCLIC, except as otherwise provided in this Settlement Agreement.

5. DCM Shares of Reserve Capital. The Parties acknowledge that DCM has acquired multiple shares of stock of Reserve Capital from former Reserve Capital shareholders that were successors in interest of Grandfathered Accounts. DCM may hereafter transfer any or all of such shares to transferee shareholders that will be indirect successors in interest, subject in all respects to the provisions of this Settlement Agreement.

6. Reporting Requirements. Within thirty (30) days after the effective date of this Settlement Agreement, Reserve Capital shall notify AID in writing of the names of all Reserve Capital shareholders with associated Grandfathered Accounts. AID shall be notified in writing of all future transfers of Reserve Capital stock with associated Grandfathered Accounts, including the names of the transferor shareholders and the transferee shareholders. From time to time hereafter, upon reasonable written request by AID, Reserve Capital shall report in writing the names of its current shareholders with Grandfathered Accounts.

7. Settlement Agreement. This Settlement Agreement shall be adopted in the form of an AID Consent Order as an administrative adjudicative Order, binding upon AID and the other Parties.

8. Litigation. Reserve Capital, RCLIC and DCM agree to dismiss the Lawsuit with prejudice within thirty (30) days from the execution of this Settlement Agreement by all the Parties, such dismissal explicitly subject to the terms and conditions of this Settlement Agreement.

9. Entire Agreement. This Settlement Agreement constitutes the complete agreement between AID, Reserve Capital, RCLIC and DCM relating to the matters specified in this Settlement Agreement. No oral modification or waiver of any of the provisions of this Agreement shall be binding on any Party.

10. Termination and Modification of Settlement Agreement. This Settlement Agreement may only be terminated, modified or amended upon mutual agreement by all Parties evidenced by a written instrument executed by an authorized representative of each Party.

11. Third Party Beneficiaries. All past, present and future shareholders of Reserve Capital are specifically intended and agreed to be third-party beneficiaries of this Settlement Agreement.

12. Binding Effect. This Settlement Agreement shall inure to the benefit of, and the obligations created hereby shall be binding upon, the Parties and respective successors and assigns. All stock of Reserve Capital will be subject to the terms of this Agreement. This Agreement will be binding upon all shareholders of Reserve Capital and all successors in interest to those shareholders.

13. Governing law. This Settlement Agreement will be a contract under the laws of the State of Arkansas and shall for all purposes be governed by and construed in accordance with the laws of the State of Arkansas (excluding the laws applicable to conflicts or choice of law).


14. Effective Date. The effective date of this Agreement shall be the last date of its execution by the Parties as indicated following their signatures.

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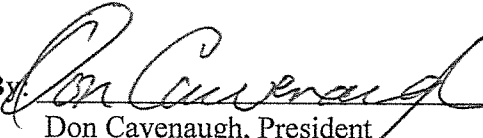
SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement.

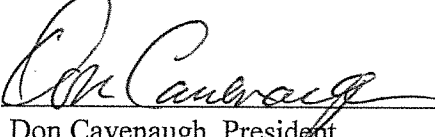
ARKANSAS INSURANCE DEPARTMENT

BY: 
Allen Kerr
Arkansas Insurance Commissioner
Date: 5/10/16

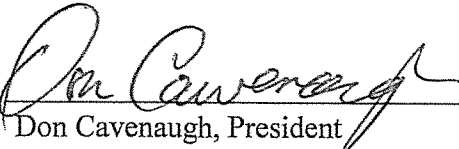
RESERVE CAPITAL CORPORATION

By: 
Don Cavanaugh, President
Date: 5-19-2016

**RESERVE CAPITAL LIFE
INSURANCE COMPANY**

By: 
Don Cavanaugh, President
Date: 5-19-2016

DON CAVENAUGH MOTORS, INC.

By: 
Don Cavanaugh, President
Date: 5-19-2016