

SEP 20 1995

STATE OF ARIZONA

DEPARTMENT OF INSURANCE DEPARTMENT OF INSURANCE

In the matter of:)	Docket No. 8153
)	
NANSEEKAY LIFE INSURANCE)	AMENDED NOTICE OF
COMPANY,)	DETERMINATION AND ORDER
)	FOR SUPERVISION, NOTICE
Respondent.)	OF HEARING
_____)	

It appears to the Director of Insurance of the State of Arizona (Director), based upon Respondent's Annual Statement as of December 31, 1994 and information provided by the Corporate and Financial Affairs Division, that Respondent's condition is such as to render the continuance of its business hazardous to the public or to holders of its policies and that Respondent has failed to comply with the law, as follows:

1. Respondent is domiciled in Arizona and presently holds a certificate of authority issued by the Arizona Department of Insurance (Department) to transact life and disability reinsurance business.

2. On March 23, 1993, the Director ordered that Respondent's Certificate of Authority be suspended pursuant to A.R.S. § 20-219.

3. On July 23, 1993, the Director ordered that Respondent be placed under the supervision of the Director pursuant to A.R.S. § 20-169 through 20-171. Respondent has remained in that status since that order. Respondent's current condition is as alleged herein.

4. Respondent transferred assets to a Merrill Lynch custodial account in the name of one of Respondent's non-insurer affiliates. This custodial account also includes the investments

1 of an Arizona domestic life and disability reinsurer affiliate,
2 American Trend Life Insurance Company (American Trend). Upon
3 information and belief, not less than \$2,574,844 of the
4 \$2,694,883 in assets reported in Respondent's annual statement
5 as of December 31, 1994 are held in the custodial account. This
6 transfer constitutes a violation of A.R.S. §§ 20-501(2) and
7 20-532(E).
8

9 5. Respondent transferred the above-referenced
10 investments without the prior approval of the Director in
11 violation of A.R.S. § 20-481.12.

12 6. On or about April 16, 1993, the Circuit Court for
13 Ingham County, Michigan placed Respondent's affiliate, American
14 Way Life Insurance Company (AWL), in rehabilitation receivership
15 and issued a permanent injunction prohibiting any transfer of
16 the funds held in the custodial account in order to assure
17 payment of reinsurance and related obligations owed by
18 Respondent and American Trend to AWL. Respondent claims there
19 are funds in the custodial account in excess of its reinsurance
20 and related obligations to AWL. However, those obligations are
21 not fully quantified at this time and the court has refused
22 Respondent's petitions for release of any part of the funds.

23 7. Respondent has failed to comply with the terms of
24 its reinsurance agreement with its affiliate, AWL. This
25 reinsurance agreement provides that the reinsurance liabilities
26 ceded by AWL to Respondent shall be secured by suitable assets
27 held in trust under a trust agreement acceptable to AWL for the
28 benefit of AWL. Respondent claims that there are sufficient
funds in the custodial account to satisfy its reinsurance and

1 related obligations to AWL. However, the custodial account does
2 not satisfy the requirement of a trust account.
3

4 8. Respondent assumed from American Trend, 100% of
5 the liabilities American Trend assumed from an affiliate,
6 American Financial Security Life Insurance Company (AFSL). On
7 July 23, 1993, the Director suspended American Trend's
8 certificate of authority, and placed it under the supervision of
9 the Director pursuant to A.R.S. §§ 20-169 through 20-171.
10 American Trend has remained suspended and under supervision
11 since those orders. Respondent claims that there are sufficient
12 funds in the custodial account to satisfy its reinsurance and
13 related obligations to American Trend. However, those
14 obligations are not fully quantified at this time. Respondent
15 lacks any other funds sufficient to discharge its reinsurance
16 obligations to American Trend.

17 9. Respondent reported total admitted assets of
18 \$2,694,883 in its 1994 annual statement. Of these total assets:

19 (a) \$2,501,980 of bonds, \$34,293 of cash and
20 \$38,571 of accrued interest thereon are currently not held in
21 Respondent's name, and are illiquid;

22 (b) \$110,125 of bonds consists of Respondent's
23 statutory deposit with this state. This deposit meets the
24 requirements of A.R.S. § 20-1087, but it is illiquid.

25 (c) Respondent's liquid assets as of December
26 31, 1994 appeared to consist of \$1,199 in cash and a \$5,880
27 prepaid expense.

28 10. Respondent's parent and ultimate controlling
person is Thomas A. Warmus (Warmus), and Respondent's affiliates

1 include AFSL, a Missouri insurer; AWL, a Michigan insurer;
2 American Way Casualty Company of Michigan (AWCC-MI), a Michigan
3 insurer; American Way Service Corporation (AWSC), a Michigan
4 corporation; and American Way Service Corporation - Southeast
5 (AWSC-SE), a Florida Motor Vehicle Service Agreement Company.

6 (a) On March 30, 1993, AFSL was placed into
7 Rehabilitation by the Circuit Court of Cole County, Missouri.

8 (b) On April 16, 1993, AWL was placed into
9 Rehabilitation by the Circuit Court for the County of Ingham,
10 Michigan.

11 (c) On April 16, 1993, AWCC-MI was placed into
12 Rehabilitation by the Circuit Court for the County of Ingham,
13 Michigan.

14 (d) On December 1, 1994, Warmus filed for
15 bankruptcy in United States Bankruptcy Court, Southern District
16 of Florida.

17 (e) On December 2, 1994, AWSC filed for
18 bankruptcy in United States Bankruptcy Court, Southern District
19 of Florida.

20 (f) On February 6, 1995, AWSC-SE was suspended
21 by the Florida Department of Insurance for being in hazardous
22 financial condition and for having demonstrated a lack of
23 fitness and/or trustworthiness.

24 (g) On December 20, 1994, the Certificate of
25 Authority of AWL was revoked by its state of domicile. Causes
26 for the revocation included hazardous financial condition and
27 failure to demonstrate the necessary competence, fitness and
28 character of management and controlling person.

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2 (h) On December 20, 1994, the Certificate of
3 Authority of AWCC-MI was revoked by its state of domicile.
4 Causes for the revocation included hazardous financial condition
5 and failure to demonstrate the necessary competence, fitness and
6 character of management and controlling person.

7 11. On June 30, 1994, the Michigan Attorney General's
8 Office announced that it had charged Warmus with six counts of
9 engaging in illegal financial transactions with AWL, AWCC-MI and
10 a company known as Tidewater Management, Inc.

11 12. Respondent's assets are not of sufficient fair
12 market value, liquidity and diversity to assure its ability to
13 meet its outstanding obligations as they mature, within the
14 meaning of A.A.C. R20-6-308(A)(5).

15 13. Respondent's affiliates and ceding insurers are
16 impaired, unable to meet their obligations as they come due, or
17 in a condition that would render the continuance of its business
18 hazardous to Respondent's policyholders or the people of this
19 state, within the meaning of A.A.C. R20-6-308(A)(9).

20 14. All persons possessing, directly or indirectly,
21 the power to cause the direction of the management and policies
22 of the insurer are not adequately competent, experienced and of
23 good character to exercise such power, within the meaning of
24 A.A.C. R20-6-308(A)(14).

25 15. Respondent has failed to fully respond to the
26 Department's inquiries relative to its financial condition,
27 within the meaning of A.A.C. R20-6-308(A)(15).

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2 16. Respondent has experienced cash flow and
3 liquidity problems, within the meaning of A.A.C.
4 R20-6-308(A)(18).

5 THE DIRECTOR THEREFORE FINDS that Respondent is in such
6 condition as to render its further transaction of insurance in
7 this state hazardous to its policyholders or to the people of
8 this state and has failed to comply with the law, within the
9 meaning of A.R.S. §§ 20-169 and 20-220(A)(3) and A.A.C.
10 R20-6-308.

11 NOW, THEREFORE, I, CHRIS HERSTAM, Director of Insurance for
12 the State of Arizona, for the purpose of protecting and
13 preserving the public health, safety and welfare, and by virtue
14 of the authority vested in me by A.R.S. §§ 20-142, 20-169
15 through 20-171 and 20-220, and A.A.C. R20-6-308, ORDER:

16 1. Respondent's certificate of authority continues
17 to be suspended.

18 2. Respondent shall continue under the supervision
19 of the Director pursuant to A.R.S. §§ 20-169 through 20-171.

20 3. Pursuant to A.R.S. § 20-170, the Supervisor shall
21 continue to be Rector & Associates, Inc.

22 4. The requirements to abate the Director's Order
23 are:

24 (a) Transfer the assets described above in the
25 Merrill Lynch custodial account together with any and all invest-
26 ment income accrued thereon back into Respondent's name; and

27 (b) Pursuant to A.R.S. § 20-1092, comply with
28 the terms of the reinsurance agreement with AWL as described
herein; and

1
2 (c) Demonstrate that the condition of Respon-
3 dent's parent and affiliates do not pose a hazard to Respondent;
4 and

5 (d) Demonstrate to the Director's satisfaction
6 that Respondent possesses adequate liquidity to meet its
7 obligations as they come due; and

8 (e) Demonstrate to the Director's satisfaction
9 that management and any controlling person of Respondent are
10 adequately competent, experienced and of good character to
11 properly manage the affairs of Respondent; and

12 (f) Establish a pattern of fully and timely
13 responding to the Department's inquiries regarding Respondent's
14 financial condition.

15 5. Pursuant to A.R.S. § 20-170, the Director here-
16 with orders that Respondent, during the period of supervision,
17 may not do any of the following things without prior approval of
18 the Director or his supervisor.

19 (a) Dispose of, convey or encumber any of its
20 assets or its business in force;

21 (b) Withdraw any of its bank accounts;

22 (c) Lend any of its funds;

23 (d) Invest any of its funds;

24 (e) Transfer any of its property;

25 (f) Incur any debts, obligations or liabilities,
26 whether insurance related or otherwise;

27 (g) Merge or consolidate with any company; or

28 (h) Enter into any new reinsurance contract or
treaty.

1 6. This matter will be heard on the 21st day of
2 November, 1995, at 10:00 o'clock a.m. at the Arizona
3 Department of Insurance, 2910 North 44th Street, Suite 210,
4 Phoenix, Arizona 85018 to consider whether Respondent has
5 complied with the Director's requirements. If the Respondent
6 has not complied, the Director will appoint a conservator who
7 shall immediately take charge of Respondent and all of its
8 property, books, records and effects. The conservator shall
9 conduct the business of Respondent and take such steps toward
10 the removal of the cause and conditions which have necessitated
11 this Order, as the Director may determine.

12 7. Pursuant to A.R.S. § 20-171(C), the costs
13 incident to the services of the Director, or his supervisor, or
14 both, including the cost of preparing a transcript of
15 proceedings in any hearing requested by the Respondent, shall be
16 charged against the assets and funds of the Respondent and shall
17 be paid when fixed and determined by the Director.

18 8. A.R.S. § 20-164, entitles any person affected by
19 such a hearing to appear in person and by counsel, to be present
20 during the giving of all evidence, to have a reasonable
21 opportunity to inspect all documentary evidence, to examine
22 witnesses, to present evidence in support of his or her interest
23 and to have subpoenas issued by the Director to compel
24 attendance of witnesses and production of evidence in its
25 behalf.

26 9. The Director herewith delegates all of his
27 authority, powers, duties and functions, whether ministerial or
28 discretionary, with which he is vested as Director of Insurance

1 of the State of Arizona, whether implied or express, to Lewis
2 Kowal for the purpose of acting as administrative law judge in
3 this matter. This delegation of authority shall continue until
4 specifically revoked.

5 10. Notwithstanding any provision of this Order,
6 nothing herein does or should be interpreted to preclude the
7 Department from taking any regulatory action at any time,
8 including but not limited to initiation of delinquency
9 proceedings at any time, even if prior to the hearing set
10 herein.

11 11. This order shall supercede the Notice of
12 Determination and Order for Supervision in this matter dated
13 July 23, 1993, and the hearing thereon scheduled for October 2,
14 1995 is hereby vacated.

15 12. Because good cause exists therefor, this Notice
16 and Order shall become effective immediately.

17 DATED this 20th day of September 1995.

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19 
20 CHRIS HERSTAM
21 Director of Insurance

22 COPY of the foregoing mailed/delivered
23 this 20th day of September 1995, to:

- 24 Charles R. Cohen, Deputy Director
25 Gregory Harris, Executive Assistant Director
26 Catherine O'Neil, Assistant Director
27 Gary Torticill, Assistant Director
28 Deloris Williamson, Assistant Director
Nancy Howse, Deputy Chief Examiner
Jeffrey Solem, Chief Analyst
Arizona Department of Insurance
2910 North 44th Street, Suite 210
Phoenix, Arizona 85018

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W. Mark Sendrow
Assistant Attorney General
Attorney General's Office
1275 West Washington Street
Phoenix, Arizona 85007

Thomas A. Warmus, President
1990 West Nine Mile Road, Suite 200
Southfield, Michigan 48037

Alan C. Gold, P.A.
Attorney at Law
Penthouse "B"
7000 Southwest 62nd Avenue
Post Office Box 43-0644
South Miami, Florida 33243-0644

Edward Rosser
95 Mountain Shadows West
Scottsdale, Arizona 85253

Neil Rector
Rector & Associates, Inc.
172 East State Street, Suite 305
Columbus, Ohio 43215

