

FILED IN DISTRICT COURT
OKLAHOMA COUNTY

IN THE DISTRICT COURT FOR OKLAHOMA COUNTY
STATE OF OKLAHOMA

MAY 13 2013
TIM RHODES
COURT CLERK

STATE OF OKLAHOMA, ex rel,)
JOHN D. DOAK, Insurance Commissioner for)
the State of Oklahoma,)
)
Plaintiff,)
)
vs.)
)
DRIVER'S INSURANCE COMPANY, a)
domestic Insurance company, in Receivership,)
)
Defendant.)
)

Case No. CJ-2013-694
The Honorable Bryan C. Dixon

34 _____

ORDER OF LIQUIDATION WITH A FINDING OF INSOLVENCY

Now on this ^{13th}~~10th~~ day of May, 2013, there comes before the Court the Receiver's Application for Order of Liquidation ("Application"). The Plaintiff State of Oklahoma, *ex rel.* John D. Doak Insurance Commissioner, as Receiver for Driver's Insurance Company, appears through counsel April M. Davis. Defendant Driver's Insurance Company's parent company and sole shareholder, National Guaranty Insurance Company, has consented to the entry of the Order hereto.

The Court, having examined the Receiver's Application; having reviewed the evidence presented thus far; having heard the arguments, representations and/or

agreements of the parties; and being fully advised, finds as follows:

1. This Court has jurisdiction of this action pursuant to 36 O.S. § 1902(A).
2. Venue in this Court is appropriate pursuant to 36 O.S. § 1902(F).
3. John D. Doak is the Insurance Commissioner of the State of Oklahoma,

and as such is charged with the duty of administering and regulating the state's insurance industry.

4. Driver's Insurance Company ("Driver's") is an Oklahoma domesticated insurance company, whose business practices qualify it as an "insurer" pursuant to Oklahoma law, and is subject to the insurance regulatory /supervisory authority of, or to liquidation, rehabilitation, reorganization or conservation by, the Oklahoma Insurance Commissioner pursuant to 36 O.S. § 1901(2).

5. On January 31, 2013, the State of Oklahoma, *ex rel.* John D. Doak, Insurance Commissioner, filed herein his *Verified Application for Order Directing Insurer to Show Cause and for Injunctive Relief*.

6. Pursuant to the Court's January 31, 2013 *Order Placing Insurer into Receivership, Appointing Receiver, Permanent Injunction and Order for Rehabilitation and Consent Thereto*, the Court directed that Driver's be placed in receivership; appointed

John D. Doak, Oklahoma Insurance Commissioner, as statutory Receiver; and directed the Receiver to rehabilitate the Company.

7. Pursuant to 36 O.S. § 1910 (B), the Receiver may apply to the Court for an Order of Liquidation if at any time he deems that further efforts to rehabilitate the insurer would be useless.

8. Pursuant to 36 O.S. §§ 1905 and 1906, the Receiver may apply to the Court for an Order directing the Receiver to liquidate the business of Driver's upon the showing of specified grounds, including that the insurer is insolvent; and/or is in a condition such that the continued operation would be hazardous to the policyholders, creditors or the general public. Driver's currently meets all of the aforesaid criteria.

9. Pursuant to 36 O.S. § 1911, an Order to liquidate the business of a domestic insurer shall direct the Receiver forthwith to take possession of the property of the insurer, to liquidate its business, to deal with the insurer's property and business in the Receiver's own name or in the name of the insurer, as the Court may direct, and to give notice to all creditors who may have claims against the insurer to present such claims.

10. The Receiver (and/or the Assistant Receiver) has taken custody of and accounted for the books and records and remaining assets of Driver's. Since entry of the

Order Placing Insurer into Receivership, Appointing Receiver, Permanent Injunction and Order for Rehabilitation and Consent Thereto, the Receiver has actively attempted to rehabilitate, market and/or sell Driver's.

11. The Receiver has determined that Driver's cannot be rehabilitated and, to date, efforts to sell Driver's have not been successful. The continuation of these efforts any further are not reasonably likely to succeed. Further, the expenditure/burn rate of estate assets makes it prohibitive to continue rehabilitation and/or sale efforts any further, other than marketing and selling the insurance charters themselves which this Court grants authorization to do pursuant to 36 O.S. § 1901, *et seq.* ("OUILA").

12. The continued effort to rehabilitate Driver's will result in the further depletion of limited remaining assets to the detriment of Driver's, and ultimately to the detriment of Driver's policyholders, creditors and the public.

13. Sufficient cause and evidence exists for the entry of the Order of Liquidation against Defendant Driver's, including the fact that Driver's is statutorily insolvent.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, AND THE PARTIES AGREE THAT:

1. This Order of Liquidation is hereby entered as to and against Driver's. This Order is a final order.

2. Driver's is statutorily insolvent.

3. Driver's has failed to demonstrate to the satisfaction of the Receiver that is capable of making good an impairment of capital or surplus, or both. The condition of Driver's is such that the continued operation would be hazardous to the policyholders, creditors or the general public. The continued effort to rehabilitate Driver's will result in the further depletion of limited assets to the detriment of Driver's, and ultimately to the detriment of Driver's policyholders and creditors, and the public.

4. Efforts by the Receiver to sell or otherwise rehabilitate Driver's have not been successful. The continuation of these efforts any further are not reasonably likely to succeed. Further, the expenditure/burn rate of limited assets makes it prohibitive to continue rehabilitation and/or sale efforts any further. However, the Receiver may continue to market the sale of Driver's insurance charters.

5. Pursuant to 36 O.S. § 1911, the Receiver shall forthwith take possession of the property of Driver's, shall liquidate its business, shall deal with Driver's property and business in the Receiver's own name as statutory Receiver and/or in the name of Driver's, and shall give notice to all creditors who may have claims against Driver's to present such claims.

6. Pursuant to 36 O.S. § 1930, the Court hereby sets a one hundred eighty (180) day claims filing period for claimants to submit claims to the Receiver. The claims filing deadline shall be one hundred eighty (180) days from the date of entry of this Order. The Receiver shall notify all persons who may have claims against Driver's of this claims filing deadline. The notice shall be given in a manner approved by the Court. Proofs of claim may be submitted after the claims filing deadline, but no such claim shall share in the distribution of the assets until all allowed claims, proofs of which have been submitted before that date, have been paid in full with interest in accordance with Oklahoma law.

7. The Receiver is vested with all powers, rights and authority, express or implied, under the provisions of the Oklahoma Uniform Insurers Liquidation Act, 36 O.S. §§ 1901 *et seq.*, in order to liquidate Driver's.

8. The Receiver is hereby vested by operation of law with title to all of the property, accounts, assets, contracts, rights of action and all of the books and records of Driver's wherever located, now or hereafter discovered.

9. Pursuant to 36 O.S. § 1925, the rights and liabilities of Driver's and of its creditors, policyholders, stockholders, members, subscribers, and all other

persons interested in its estate shall be fixed as of the date of entry of this Order of Liquidation, subject to the provisions otherwise set forth herein and/or within the OUILA with respect to the rights of claimants holding contingent claims.

10. With respect to claimants holding contingent claims, including causes of action against Driver's or Driver's insureds, the provisions of 36 O.S. § 1929 shall govern said claimants' rights in this liquidation proceeding.

11. All direct policies not previously cancelled, non-renewed or otherwise terminated and/or certificates of insurance heretofore issued by Driver's are hereby cancelled upon the following terms. The termination of policies set forth herein supercedes any contractual or statutory provisions pertaining to the renewal or cancellation of policies:

a. All direct policies and/or certificates of insurance which may give rise to "covered claims" as defined and set forth in the Oklahoma Property and Casualty Insurance Guaranty Association Act, 36 O.S. §§ 2001, *et seq.*, or which may give rise to "covered claims" of a similar organization in any other state, as defined by the provisions of such similar statute in any such other state, shall be cancelled on the earliest of:

(i) At 12:01 a.m., local time of the insured or policyholder of any such direct policy and/or certificate of insurance, on the *thirty-first* (31st) day following the date of entry of this Order of Liquidation; or

(ii) Upon the expiration of any such direct policy and/or certificate of insurance, if the expiration date is within thirty (30) days from the date of entry of this Order of Liquidation; or

(iii) Upon the date requested by the insured or policyholder of any such direct policy and/or certificate of insurance pursuant to policy provisions, if the requested cancellation date is within thirty (30) days following the date of entry of this Order of Liquidation.

b. All other direct policies and/or certificates of insurance issued by Driver's shall be cancelled effective as of the date of entry of this Order of Liquidation.

c. Further, the continuation of the policies until the dates specified above is contingent upon premium payments continuing to be paid when due during the post-liquidation cancellation period, without

regard to any pre-liquidation offsets (if allowable by law) for deposits claimed to be held by Driver's or its parent holding company; otherwise the policy shall cancel/terminate upon non-payment of premium pursuant to policy provisions.

d. In the event a policy is deemed to have lapsed as of the entry of the Order of Liquidation or within thirty (30) days following the date of entry of the Order of Liquidation, such policy will not be reinstated.

12. Pursuant to 36 O.S. § 1923, the Insurance Commissioner, as Receiver, shall not be required to pay any fee to any public officer in this state for filing, recording, issuing a transcript or certificate or authenticating any paper or instrument pertaining to the exercise by the Insurance Commissioner, as Receiver, of any of the powers or duties conferred upon him, whether or not such paper or instrument be executed by the Insurance Commissioner or his assistants, deputies, employees or attorneys of record and whether or not it is connected with the commencement of any action or proceeding by or against the Insurance Commissioner, or with the subsequent conduct of such action or proceeding.

13. The permanent and temporary injunctive relief entered by the Court in its *Order Placing Insurer into Receivership, Appointing Receiver, Permanent Injunction and*

Order for Rehabilitation and Consent Thereto shall remain in effect as set forth and provided for therein and/or as set forth herein.

14. Any and all banks, brokerage houses, financial institutions and any and all other companies, persons or entities having knowledge of and/or presented with a copy of this Order and having in its possession accounts or any other assets which are, or may be, the property of Driver's are restrained from disbursing or disposing of said accounts or assets, and are further restrained from disposing of or destroying any records pertaining to any business transaction between Driver's; and such banks, brokerage houses, financial institutions, companies, persons or entities having done business or doing business with Driver's or having in its possession assets and/or records which are, or may be, the property of Driver's are ordered to immediately deliver any and all such assets and/or records to the Receiver.

15. All agents, brokers and fronting companies of Driver's and their respective agents, servants, representatives and employees, and all other persons having knowledge of and/or presented with a copy of this Order are restrained from returning any un earned premiums or any money in their possession, or under their control, collected from premiums upon policies, contracts or certificates of insurance

or reinsurance previously issued by Driver's to policyholders or others; and all such agents, servants, representatives and employees are directed to turn over all such funds in their possession or under their control, including any premium or money to which they may hereafter acquire possession or control, to the Receiver in gross and not net of any commissions which may be due thereon .

16. All expenses of these proceedings shall be taxed and assessed against Driver's as approved by the Court.

17. The Receiver is hereby vested by operation of law to assert and prosecute common claims on behalf of policyholders and creditors of the estate.

18. As Receiver, the Insurance Commissioner may appoint one or more assistant commissioners or receivers to act for him and may employ such counsel, clerks, and assistants as he deems necessary. The Receiver's selection of Terry K. Smith as Assistant Receiver and the Jones, Otjen & Davis Law Firm as Counsel for the Receiver, is hereby approved and reaffirmed. The Receiver's use of state employees in connection with this action is hereby approved and reaffirmed, and reimbursement to the Oklahoma Insurance Department for the actual cost to the Department of the salary and benefits of such employees is hereby approved as a

Class I expense of the estate. The compensation of the assistant commissioners or receivers, counsel, clerks, or deputies, and all expenses of taking possession of Driver's, and of conducting the proceedings shall be fixed by the Receiver , subject to approval of this Court , and shall be paid out of the funds or assets of Driver's, as deemed appropriate/necessary by the Receiver and approved by the Court. Within the limits of duties imposed upon them , any assistant receiver shall possess all of the powers given to the Receiver and, in the exercise of those powers, shall be subject to all of the duties, powers and limitation s imposed upon the Receiver with respect to these proceedings, pursuant to 36 O.S. § 19 14(F).

19. If any legal action is commenced against the Insurance Commissioner, Receiver, assistant commissioners or receivers, retained counsel, deputies, and/or any of their employees or personnel, whether personally or in an official capacity, alleging property damage, property loss, personal injury, or other civil liability caused by or resulting from any alleged act, error, or omission of any such person, the Insurance Commissioner, Receiver, assistant commissioners or receivers, deputies, retained counsel, and/or any of their employees or personnel shall be immune from liability and indemnified as defined and set forth under 36 O.S. § 1937.

20. Until further order of the Court, no obligation, claim or debt of or against Driver's shall be paid except those which the Receiver deems to be necessary or appropriate to facilitate the taking of possession or commencement/furtherance of the liquidation of Driver's. Except as provided for herein, no distribution of the property/assets of Driver's will be made without approval of the Court.

21. Driver's and each of its respective officers, employees, directors, trustees, stockholders, shareholders, members, subscribers, agents, representatives, and all other persons, are hereby permanently enjoined and prohibited from transacting any further business of Driver's; and are further permanently enjoined and prohibited from wasting, transferring, selling concealing, destroying, disbursing, disposing of, or assigning any assets, contracts, causes of action, funds, records, correspondence, memoranda, or any other documents or other property of Driver's, or any of its respective affiliates, or interfering with the Receiver and/or these receivership proceedings.

22. Driver's, its respective officers, employees, directors, affiliates, trustees, stockholders, shareholders, members, subscribers, enrollees, insurers, reinsurers, agents, representatives, contractors, subcontractors and all other persons, are hereby

directed to assign, transfer and deliver any/all amounts owed to and/or property or records of Driver's to the Receiver.

23. Driver's officers and directors have previously resigned and any/all of their authority has been revoked/withdrawn.

24. All persons and entities (including secured creditors, unsecured creditors, claimants and/or litigants) are hereby enjoined and prohibited from wasting, transferring, selling, concealing, destroying, disbursing, disposing and assigning, in any manner, the assets and/or property of Driver's; and are further permanently enjoined and prohibited from prosecuting any pending action or litigation involving Driver's (whether as a plaintiff or defendant or insurer/indemnitor thereto); obtaining any preferences, judgments, attachments, or other liens against Driver's; making any levy against Driver's or against its assets or any part thereof; or interfering with the Receiver and/or these receivership proceedings.

25. Any amounts recovered or recoverable from a contractor, reinsurer, or other insurer of Driver's shall not be reduced as a result of this Order or this delinquency proceeding.

26. Unless otherwise ordered by the Court, any violations of this Order or the injunctive relief set forth herein shall be deemed a contempt of Court and shall subject the violating party to such penalties as allowed by law.

27. All rights, duties and powers of the Receiver set forth in the *Order Placing Insurer into Receivership, Appointing Receiver, Permanent Injunction and Order for Rehabilitation and Consent Thereto* are reaffirmed. The injunctive relief set forth in the *Order Placing Insurer into Receivership, Appointing Receiver, Permanent Injunction and Order for Rehabilitation and Consent Thereto* shall continue and is reaffirmed. All findings and rulings of the Court set forth in the *Order Placing Insurer into Receivership, Appointing Receiver, Permanent Injunction and Order for Rehabilitation and Consent Thereto* are reaffirmed.

28. The Court further enjoins and orders that all claims and/or proceedings in which Driver's, its policyholder(s), or any Guaranty Association (in this state or another state in which Driver's is licensed) is a party shall be stayed one hundred (120) days (or the time period set forth in any similar statute in other states) from the date of this Order of Liquidation to permit proper legal action by the Guaranty Association on any matters germane to its powers and duties. As to judgment under

any decision, order, verdict or finding based on default, the Guaranty Association may apply to have such judgment set aside by the same court that made such judgment and shall be permitted to defend against such suit on the merits.

Signed the 10th day of May, 2013.

BRYAN C. DIXON

HONORABLE BRYAN C. DIXON
JUDGE OF THE DISTRICT COURT

April M. Davis

Stephen Jones, OBA #4805
April M. Davis, OBA #17854
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STATE OF OKLAHOMA, EX REL.
JOHN D. DOAK, INSURANCE COMMISSIONER, AS
RECEIVER FOR DRIVER'S INSURANCE COMPANY

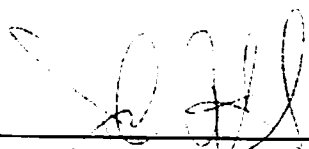
CONSENT TO ORDER

1. Defendant has reviewed the foregoing Order Placing Insurer Into Liquidation.
2. Defendant admits the jurisdiction of the Insurance Commissioner, State of Oklahoma, and consents to the entry of the foregoing Order.

3. Defendant is aware of its right to notice and a hearing at which it may be represented by counsel, present evidence and examine witnesses. Defendant irrevocably waives its right to such notice and hearing and to any court appeals relating to this Consent Order of Liquidation.

4. John Ratzel represents the sole shareholder of Driver's Insurance Company as the President of National Guaranty Insurance Company, Driver's parent company, and he is duly authorized to execute this Consent Order on Driver's behalf.

National Guaranty Insurance Company

By  _____
John Ratzel, President
National Guaranty Insurance Company
(Sole Shareholder of Drivers Insurance
Company)

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of May, 2013, a true and correct copy of the above and foregoing instrument was sent via U.S. Mail, postage paid, to:

Oklahoma Receivership Office, Inc.
3613 NW 56th Suite 330
Oklahoma City, OK 73112

Oklahoma Insurance Dept.
3625 NW 56th Street, Ste. 100
Oklahoma City, OK 73112

Stephen Jones
Jones, Otjen & Davis
114 E. Broadway, Suite 1100
Enid, OK 73702-0472

John Ratzel
National Guaranty Ins Company
1855 Satellite Blvd., Suite 100
Duluth, Georgia 30097



April Davis