

MAY 13 2013

TIM RHODES  
COURT CLERK

IN THE DISTRICT COURT OF OKLAHOMA COUNTY  
STATE OF OKLAHOMA

35

STATE OF OKLAHOMA, ex rel. )  
JOHN D. DOAK, Insurance Commissioner, )

Petitioner, )

) Case No. CJ-2013-694

vs. )

) Honorable Bryan C. Dixon

DRIVER'S INSURANCE COMPANY, )  
a licensed domestic insurer in the )  
State of Oklahoma, )

Defendant. )

RECEIVER'S APPLICATION FOR ORDER OF LIQUIDATION

COMES NOW the State of Oklahoma, *ex rel.* John D. Doak, Insurance Commissioner, as Receiver for Driver's Insurance Company, by and through his counsel of record, and pursuant to the Oklahoma Uniform Insurers Liquidation Act, 36 O.S. § 1901, *et seq.* ("OUILA"), respectfully requests an Order directing the Receiver to liquidate the business of Driver's Insurance Company, an Oklahoma domestic insurer. In support, the Receiver alleges and sates the following:

1. 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.*

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

3. 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.

4. 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; is in a condition such that the continued operating would be hazardous to the policyholders, creditors or the general public; has failed to comply with an order of the Insurance Commissioner to make good an impairment of capital or surplus or both; and/or if the company has consented to such an order through a majority of its directors, stockholders, members or subscribers. Driver's currently meets all of the aforesaid criteria.

5. 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 creditors who may have claims against the insurer to present such claims.

6. The Receiver (and/or Assistant Receiver) has taken custody of and accounted for the books and records and remaining assets of Driver's. Since entry of the Consent Order of Rehabilitation, the Receiver has actively attempted to rehabilitate, market and/or sell Driver's.

7. 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 we seek authorization from this Court to do pursuant to 36 O.S. § 1901, *et seq.* ("OUILA").

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

9. As set forth herein, the Receiver respectfully requests an Order of Liquidation be entered directing the Receiver to liquidate the business of Driver's, to deal with Driver's property and business in the Receiver's name or in the name of

Driver's, to give notice to all creditors who may have claims against Driver's, to adjudicate and present such claims to the Court, and to take all other action necessary to facilitate the liquidation of Driver's.

10. Pursuant to 36 O.S. § 1930, the Receiver requests that the Court set a one hundred eighty (180) day claims filing period and that the Court order the claims bar deadline to occur one hundred eighty (180) days from filing date of the liquidation order.

11. The Receiver further requests that all direct policies not previously cancelled, non-renewed or otherwise terminated, and/or certificates of insurance heretofore issued by Driver's be cancelled upon the following terms:

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 other state, shall be cancelled:

(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 (31<sup>st</sup>) day following the date of entry of the 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 the 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 the 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 the Order of Liquidation.

c. Further, the aforementioned is predicated and contingent upon premium payments continuing to be paid when due during the post-liquidation cancellation period, 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 (30) days following the date of entry of the Order of Liquidation, such policy will not be reinstated.

12. The Receiver further requests that the rights, duties and powers of the Receiver set forth in the Consent Order of Rehabilitation be reaffirmed by the Court, that the injunctive relief set forth in the Consent Order of Rehabilitation be continued and reaffirmed by the Court, and that the Court further enjoin and order that all claims and/or litigation involving Driver's and/or for which Driver's may be required or requested to pay under any policy of insurance be stayed pending activation/engagement of the respective state guaranty associations and assumption of the claims and/or litigation by said guaranty associations.

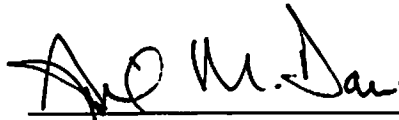
13. The Receiver also requests the following stay language be included in the Order of Liquidation, in accordance with the Oklahoma Property and Casualty Insurance Guaranty Association Act (36 O.S. § 2020) and/or similar statutes in other states governing the states' respective Guaranty Association:

All 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.

WHEREFORE, premises considered, the State of Oklahoma, *ex rel*, John D. Doak, Insurance Commissioner, as statutory Receiver prays the Court enter an Order of Liquidation and grant the specific relief requested herein.

Respectfully submitted,



Stephen Jones, OBA #4805  
April McCurdy Davis, OBA #17854  
JONES, OTJEN & DAVIS  
114 E. Broadway, Suite 1100  
Post Office Box 472  
Enid, OK 73702-0472  
ATTORNEY FOR PLAINTIFF  
STATE OF OKLAHOMA, EX REL.  
JOHN D. DOAK, INSURANCE  
COMMISSIONER, AS RECEIVER  
FOR DRIVER'S INSURANCE COMPANY

I, TIM RHODES, Court Clerk for Oklahoma County, Okla., certify that the foregoing is a true, correct and complete copy of the instrument as appears of record in the District Court Clerk's Office of Oklahoma County, Okla., this 13 day of May, 2013

By Tim Rhodes Deputy

**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 56<sup>th</sup> Suite 330  
Oklahoma City, OK 73112

Oklahoma Insurance Dept.  
3625 NW 56<sup>th</sup> 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