

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

FILED IN THE DISTRICT COURT
OKLAHOMA COUNTY, OKLA.

APR 12 2011

PATRICIA PRESLEY, COURT CLERK
by  DEPUTY

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

Plaintiff,

v.

EAGLE INSURANCE AGENCY HOLDINGS, LLC, a
resident producer and managing general agent,

Defendant.

Case No. CV-2010-860

Judge: Barbara G. Swinton

**FINDINGS OF FACT AND CONCLUSIONS OF LAW
JOURNAL ENTRY GRANTING PLAINTIFF'S APPLICATION
FOR ORDER OF RECEIVERSHIP, AND ORDER OF LIQUIDATION**

Now on this 20th day of October, 2010, there comes before the Court the Plaintiff's Application for Order of Receivership ("Application") seeking an order of receivership and liquidation from the Court. The Plaintiff State of Oklahoma, *ex rel.* John Doak, Insurance Commissioner ("Commissioner" or "Plaintiff"),¹ appears through counsel Daniel D. Draper III and Jennifer H. Barrett. Defendant Eagle Insurance Agency Holdings, LLC ("Eagle"), appears through counsel Brian E. Dittrich and Stephen Jones.²

The Court, having examined the Plaintiff's Application; having held a full evidentiary hearing occurring on 8/26/10, 8/27/10, 9/3/10, 9/8/10 and 10/20/10; having fully reviewed the record and evidence presented; having heard argument of counsel; and otherwise being fully advised and informed finds, concludes and orders as follows:

¹ On January 10, 2011, John Doak was sworn in as Oklahoma Insurance Commissioner, replacing former Commissioner Kim Holland.

² Mr. Jones has subsequently withdrawn from the matter, but appeared and presented Eagle's case on all dates of the full evidentiary hearing.

FINDINGS OF FACT

1. Eagle is an Oklahoma domestic limited liability company and Oklahoma licensed resident producer agency and managing general agency.

2. Eagle has ceased doing business. In its Answer filed August 9, 2010, Eagle states that it "has no ongoing business nor does it have a resident or non resident producer, here or in any other state...."

3. Eagle is 100% owned by Mr. Jerry Lancaster. Two other companies related to Mr. Lancaster have been placed in receivership and ordered to be liquidated by the Oklahoma District Court. Providence Property and Casualty Insurance Company (now known as Park Avenue Property and Casualty and Insurance Company) was placed in receivership on November 18, 2009, and ordered to be liquidated on November 20, 2009, in Oklahoma County Case No. CJ-2009-11178. Imperial Casualty and Indemnity Company ("Imperial") was placed in receivership on March 18, 2010, and ordered to be liquidated on May 12, 2010, in Oklahoma County Case No. CJ-2010-2340.

4. Imperial is the company with whom Eagle entered into its "Assignment of Workers Compensation Managing General Agent Agreement" in June 2009. Notice of this agreement was not provided to the Commissioner by either Eagle or Imperial prior to the execution of the agreement.

5. John 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. 36 O.S. § 307.

6. On July 17, 2010, the Commissioner³ filed an *Application for Order of Receivership and Request for Injunctive Relief* seeking to place Eagle in receivership and praying for an order of liquidation.

³ Former Insurance Commissioner Kim Holland.

7. Pursuant to § 1903 of the Oklahoma Uniform Insurers Liquidation Act, 36 O.S. § 1901 *et seq.* ("OUILA"), the Court conducted a full evidentiary hearing upon the Commissioner's Application, occurring on 8/26/10, 8/27/10, 9/3/10, 9/8/10 and 10/20/10.

8. Both the Commissioner and Eagle presented their cases in chief, including documentary evidence and testimony of witnesses. All testifying witnesses were subject to cross-examination.

9. As detailed in the hearing transcript of record in this case, the Commissioner presented evidence and met his burden of proof to establish and convince the Court that Eagle: (a) is in a condition such that the continued operation of Eagle would be hazardous to Eagle's creditors and/or the general public; (b) has refused to submit its books, records, accounts or affairs to reasonable examination by the Commissioner; (c) has willfully violated multiple laws of this state; and/or (d) has an officer, director, or manager who has refused to be examined under oath concerning Eagle's affairs.

10. The Commissioner presented evidence and met his burden of proof to establish and convince the Court that multiple criteria of 36 O.S. § 1905 has been met, including but not limited to:

- (a) Anticipated claims against Eagle exceed Eagle's known assets, placing Eagle in a condition such that the continued operation of Eagle would be hazardous to Eagle's creditors and/or the general public, warranting placing Eagle in receivership and initiating the orderly and fair liquidation of Eagle's assets for the equal benefit of all creditors, in accordance with the OUILA.

- (b) Eagle's primary asset, a stock certificate⁴ valued at approximately \$7.5 million (Eagle's purchase price), is currently encumbered and deposited with the Dallas County Court at Law No. 2, State of Texas, in Cause No. CC-10-02939-B, as potential collateral/security for claims asserted by two of Eagle's creditors/claimants who have asserted damages of \$5 - 10 million against Eagle.
- (c) Eagle's deposit of the stock certificate with the Texas court was in violation of the Commissioner's May 10, 2010, Notice and Order of Supervision and Examination, as well as this Court's July 14, 2010, Order Directing Insurer to Show Cause and Allowing Injunctive Relief.
- (d) Any utilization of the stock certificate to satisfy the claims in Cause No. CC-10-02939-B would provide those creditors a preference/priority claim over all other creditors of Eagle.
- (e) Mr. Lancaster provided incorrect, misleading, incomplete and materially untrue information in Eagle's licensing applications submitted to the Oklahoma Insurance Department, in that Mr. Lancaster failed to disclose a prior adjudication against him of breach of fiduciary duty.
- (f) At the time of filing of the Commissioner's Application, at the time of conclusion of the full evidentiary hearing, and at the time of decision by this Court, Eagle did not have a designated licensed producer responsible for Eagle's compliance with the insurance laws, rules and regulations of this state.

⁴ Stock Certificate No. 59 issued to Eagle for thirty-two thousand six hundred nine (32,609) shares of BMSI Holdings, Inc.

- (g) At the time of filing of the Commissioner's Application, at the time of conclusion of the full evidentiary hearing, and at the time of decision by this Court, Eagle did not maintain its residency or principal place of business in Oklahoma. Rather, Eagle maintained its residency and principal place of business in Texas.
- (h) Eagle failed to deliver its insurance license to the Commissioner upon Eagle's terminating and/or ceasing to maintain its residency in this state.
- (i) Mr. Lancaster is not a resident of Oklahoma.
- (j) The Commissioner noticed Eagle - via its officer, director, or manager Mr. Lancaster - to be examined under oath concerning Eagle's affairs. Mr. Lancaster refused to be examined under oath concerning Eagle's affairs.
- (k) Eagle failed or refused to keep at its place of business in Oklahoma the usual and customary records pertaining to transactions authorized by Eagle's license.
- (l) Eagle failed or refused to keep all records regarding its transactions available and open to the inspection of the Commissioner.
- (m) Eagle undertook to provide services as a managing general agent regarding the "low deductible coverage" marketed with Dallas National Insurance Company and BancInsure.
- (n) No written contract was in force between the parties which set forth the responsibilities of each party regarding the "low deductible coverage" marketed with Dallas National Insurance Company and BancInsure.
- (o) Eagle has failed or refused to provide the Commissioner access to all books, bank accounts and records of Eagle in a form usable to the Commissioner.

(p) Eagle's records were not retained according to the provisions of 36 O.S. § 1435.13 (E).

(q) The Eagle/Imperial "Assignment of Workers Compensation Managing General Agent Agreement" constituted either an assignment in whole or in part of Eagle's MGA contract with BancInsure, and/or a management agreement or service contract between "affiliates" in an "insurance holding company system" as defined in 36 O.S. § 1651.

11. At the close of the evidence upon completion of the hearing, the Court concluded that one or more of the criteria of 36 O.S. § 1905 had been met, as established and detailed in the hearing transcript of record, and that the Commissioner's Application should be granted.

CONCLUSIONS OF LAW

12. This Court has jurisdiction pursuant to 36 O.S. § 1902(A).

13. Venue is appropriate pursuant to 36 O.S. § 1902(F).

14. Eagle's business practices qualify it as an "insurer" pursuant to Oklahoma law, and Eagle is subject to the insurance regulatory/supervisory authority of, or to liquidation, rehabilitation, reorganization or conservation by, the Oklahoma Insurance Commissioner. 36 O.S. §§ 1802(2) & 1901(2); *McSorley v. Hertz Corp.*, 1994 OK 120, 885 P.2d 1343, 1351 (Oklahoma's insurance code "broadly defines" insurers).

15. Pursuant to § 1905 and § 1906 of the OUIA, the Commissioner may apply to the Court for an Order appointing the Commissioner as Receiver of Eagle upon the showing of specified grounds, including that Eagle (a) is in a condition such that the continued operation would be hazardous to the policyholders, creditors or the general public; (b) has refused to submit its books, records, accounts or affairs to reasonable examination by the Commissioner; (c) has willfully

violated its charter or any law of this state; and/or (d) has an officer, director, or manager who has refused to be examined under oath concerning its affairs. 36 O.S. §§ 1905 and 1906.

16. As detailed in the hearing transcript of record in this case and herein, one or more of the criteria of 36 O.S. § 1905 has been met. The Court concludes that:

- A. The condition of Eagle is such that its continued operation would be hazardous to Eagle's creditors and/or the general public. 36 O.S. § 1905(2).
- B. Eagle has refused to submit its books, records, accounts or affairs to reasonable examination by the Commissioner. 36 O.S. § 1905(3).
- C. Eagle has willfully violated multiple provisions of the laws of this state, Oklahoma Insurance Code, Title 36 of the Oklahoma Statutes. 36 O.S. § 1905(6).
 - i. Eagle has willfully violated § 1435.7(B)(2) of the Oklahoma Producer Licensing Act, 36 O.S. § 1435.7(B)(2). Eagle did not have a designated licensed producer responsible for Eagle's compliance with the insurance laws, rules and regulations of this state.
 - ii. Eagle has willfully violated § 1435.7(B)(3) of the Oklahoma Producer Licensing Act, 36 O.S. § 1435.7(B)(3). Eagle did not maintain its principal place of business in this state.
 - iii. Eagle has willfully violated § 1435.13(E) of the Oklahoma Producer Licensing Act, 36 O.S. § 1435.13(E). Eagle did not keep at its place of business in Oklahoma the usual and customary records pertaining to transactions authorized by Eagle's license. Additionally, Eagle failed or refused to keep all records regarding its transactions available and open to the inspection of the Commissioner.

- iv. Eagle has willfully violated § 1435.13(J) of the Oklahoma Producer Licensing Act, 36 O.S. § 1435.13(J). Eagle failed to deliver its insurance license to the Commissioner upon Eagle's terminating and/or ceasing to maintain its residency in this state.
- v. Eagle has willfully violated § 1474 of the Oklahoma Managing General Agents Act, 36 O.S. § 1474.
 - a. Eagle did not have a written contract with BancInsure regarding the "low deductible coverage" marketed with Dallas National Insurance Company which set forth the responsibilities of each party. 36 O.S. § 1474
 - b. Eagle failed to maintain, and allow access to the Commissioner, all books, bank accounts and records of Eagle, and failed to retain its records according to the provisions of 36 O.S. § 1435.13(E). 36 O.S. § 1474(4).
 - c. To the extent that the "Assignment of Worker's Compensation Insurance Managing General Agent Agreement" constituted an assignment in whole or part of Eagle's MGA contract with BancInsure (as the Commissioner alleges), Eagle has willfully violated 36 O.S. § 1474(5), which prohibits assignment in whole or in part of the MGA contract by the managing general agent.
- vi. To the extent that the "Assignment of Worker's Compensation Insurance Managing General Agent Agreement" constituted a management agreement and/or service contract concerning Eagle's MGA contract with BancInsure

(as Eagle alleges), Eagle has willfully violated 36 O.S. § 1655(b)(3)(iii), which prohibits the entering into management agreements or service contracts with an “affiliate” in an “insurance holding company system” (*see* 36 O.S. § 1651) without thirty days written notice to the Commissioner. While § 1655(b)(3)(iii) did not necessarily impose the duty upon Eagle to have provided the written notice, it did prohibit Eagle from entering into a management agreement or service contract with its affiliate Imperial until written notice was provided to the Commissioner in compliance with § 1655(b)(3)(iii).

D. Eagle’s officer, director, or manager Jerry Lancaster refused to be examined under oath concerning Eagle’s affairs prior to the evidentiary hearing on Plaintiff’s Application. 36 O.S. § 1905(7).

17. The showing by the Commissioner of any one or more of the criteria in 36 O.S. § 1905 is sufficient to trigger the applicability of the OUILA and the placing of Eagle in receivership.

18. One or more of the criteria of 36 O.S. § 1905 has been established by the Commissioner.

19. 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.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:

20. The Commissioner's Application for Order of Receivership should be and hereby is granted.

21. Eagle is hereby ordered to be placed in receivership pursuant to and in accordance with the OUILA, and ordered to be liquidated in accordance with the OUILA. This Order is a final order.

22. John Doak, Insurance Commissioner of the State of Oklahoma, is hereby appointed Receiver of Eagle.

23. The Receiver is vested with all powers, rights and authority, express or implied, under the provisions of the OUILA, in order to liquidate Eagle.

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

25. Pursuant to 36 O.S. § 1914, 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 Eagle, wherever located, now or hereafter discovered.

26. Any and all banks, brokerage houses, financial institutions and any and all other companies, persons, entities or governmental bodies 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 Eagle 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 with or involving Eagle; and such banks, brokerage houses, financial institutions, companies, persons, entities or governmental bodies having done business or doing business with Eagle or

having in its possession assets and/or records which are, or may be, the property of Eagle are ordered to immediately deliver any and all such assets and/or records to the Receiver.

27. All expenses of these proceedings shall be taxed and assessed against Eagle as approved by the Court.

28. 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 Donna Wilson as Assistant Receiver and Draper Law Firm and Barrett Dennis, PLLC, as Counsel for the Receiver is hereby approved. The compensation of the assistant commissioners or receivers, counsel, clerks, or deputies, and all expenses of taking possession of Eagle, 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 Eagle, 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 limitations imposed upon the Receiver with respect to these proceedings, pursuant to 36 O.S. § 1914(F).

29. Until further order of the Court, no obligation, claim or debt of or against Eagle 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 receivership of Eagle. Except as provided for herein and/or within the OUILA, no distribution of the property/assets of Eagle will be made without approval of the Court.

30. Eagle 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 Eagle; 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 Eagle, or any of its respective affiliates, or interfering with the Receiver and/or these receivership proceedings.

31. Until further order from this Court, 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 Eagle; and are further enjoined and prohibited from prosecuting any pending action or litigation involving Eagle (whether as a plaintiff or defendant or insurer/indemnitor thereto); obtaining any preferences, judgments, attachments, or other liens against Eagle; making any levy against Eagle or against its assets or any part thereof; or interfering with the Receiver and/or these receivership proceedings.

32. Pursuant to 36 O.S. §§ 1914 and 1922, the Court requests the stock certificate⁵ currently deposited with the Dallas County Court at Law No. 2, State of Texas, in Cause No. CC-10-02939-B, be released and transferred by the Texas Court to the Receiver within thirty (30) days, in accordance with the full faith and credit afforded and established by TEX. INS. CODE ANN. § 443.402(a).⁶ The Receiver is authorized to proceed with liquidating and selling the stock, upon appraisal and approval of this Court.

33. 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**

⁵ Stock Certificate No. 59 issued to Eagle for thirty-two thousand six hundred nine (32,609) shares of BMSI Holdings, Inc.

⁶ See also *Peden v. Pohl*, 2009 WL 2882933 *8-9 (Tex.App.-Hous. (1st Dist.) Sept. 10, 2009).

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 Eagle 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. 36 O.S. § 1930.

34. Pursuant to 36 O.S. § 1925, the rights and liabilities of Eagle 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.

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

36. 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.

37. All agents, brokers and fronting companies of Eagle 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 unearned 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 Eagle to policyholders or others; and all 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.

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

39. 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 as 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.

40. Until further order of the Court, no obligation, claim or debt of or against Eagle 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 Eagle. Except as provided for herein, no distribution of the property/assets of Eagle will be made without approval of the Court.

41. Eagle, 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 Eagle to the Receiver.

42. Eagle's officers and directors are hereby terminated and any/all of their authority is revoked/withdrawn.

43. Any amounts recovered or recoverable from a contractor, reinsurer, or other insurer or other 3rd party of Eagle shall not be reduced as a result of this Order or this delinquency proceeding.

44. The Court, being duly informed, authorizes the Receiver to pay any and all incurred and/or remaining expenses which were incurred with the approval of the Commissioner, Supervisor, Receiver, or the Assistant Receiver since the Commissioner's May 10, 2010, Notice and Order of Supervision and Examination, and/or the Court's July 14, 2010, Order Directing Insurer to Show Cause and Allowing Injunctive Relief.

45. 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.

Signed this 12th day of April, 2011.


JUDGE OF THE DISTRICT COURT