

IN THE DISTRICT COURT WITHIN AND FOR OKLAHOMA COUNTY  
OKLAHOMA COUNTY

FILED  
DISTRICT COURT  
OKLAHOMA COUNTY  
1994 FEB 14 P 1:52

STATE OF OKLAHOMA, ex rel. )  
CATHY J. WEATHERFORD, Insurance )  
Commissioner, )  
 )  
Petitioner, )  
 )  
vs. )  
 )  
EMPLOYERS NATIONAL INSURANCE )  
CORPORATION, a licensed domestic )  
insurer in the State of Oklahoma, )  
 )  
Respondent. )

TOM PETUSKEY, --  
COURT CLERK  
BY \_\_\_\_\_  
DEPUTY

Case No. CJ-94-256

ORDER OF LIQUIDATION AND PERMANENT INJUNCTION

On this 14th day of February, 1994, there came on for consideration the verified Application of Cathy J. Weatherford, Insurance Commissioner, State of Oklahoma, seeking, inter alia, an Order from this Court to liquidate Employers National Company ( the "Company"). The Insurance Commissioner, Cathy J. Weatherford was represented by her attorney's Kent Frates and Dekovan L. Bowler. The Oklahoma Property and Casualty Guaranty Association was represented by their attorney Larry Derryberry.

Now, the Court, having examined such application and received into evidence the testimony of witnesses sworn and examined before the Court and being fully advised in the premises, finds as follows:

1. The Receiver is authorized and directed to take all actions necessary and appropriate for the accomplishment of the liquidation of the Company in accordance with the Oklahoma Uniform Insurers Liquidations Act 36 Okla. Stat. §1901 (1991)(the "Act").

2. In connection with this delinquency proceeding, the Receiver may employ such counsel, clerks, deputies and assistants as Receiver deems necessary. Compensation for such counsel, clerk, deputies or assistants and the amount of expenses incurred taking possession of the Company and administering this case shall be fixed by Receiver, subject to approval of the Court, and paid from the funds and property of the Company. Within the respective duties delegated to each of them by the Receiver, all deputies, assistants and counsel shall possess all the powers given to the Receiver under the Act or this Order.

3. The Receiver and Receiver's counsel, clerks, assistants and deputies, shall have no personal liability for their respective acts or omissions in connection with this delinquency proceedings, unless such acts or omissions are deemed to constitute willful misconduct, gross negligence or criminal intent. All damages, expenses and costs incurred by Receiver or Receiver's counsel, clerks, assistants and deputies in connection with lawsuits against them arising out of or relating to this delinquency proceeding, in their official or personal capacity, shall be paid out of the funds and assets of the Company; provided, that the Receiver and Receiver's counsel, assistants, clerks and deputies shall reimburse the Company should such a person be finally adjudged to have been guilty of willful misconduct, gross negligence or criminal intent.

4. The Receiver is vested with title to all property of the Company, wherever located, now or hereafter discovered including without limitation, bank accounts, certificates of deposits, other cash equivalents, stocks, bonds, other securities, furniture, fixtures and office supplies, other personal property of any nature, real estate, contract, receivables, claims, rights of action and books and records, and is hereby directed to take immediate and exclusive possession and control of same. The Receiver may deal with such property in the name of the Company or in her name as Receiver.

5. The recording of certified copy of this Order in the office of the County Clerk of Oklahoma County, Oklahoma, shall impart the same notice as would be imparted by deed, bill of sale or other evidence of title duly recorded or filed. All agents, brokers and other persons or entities holding funds, assets or property of or on behalf of the Company shall immediately deliver such funds, assets or property to Receiver along with an accounting of same.

6. Until further order of this Court, no obligation, claim or debt of the Company shall be paid except those which the Receiver deems are necessary or appropriate to facilitate the taking of possession and commencement of liquidation. Except as provided in the preceding sentence, no distribution of the Company's property will be made without further order of this Court.

7. The Company, together with its directors, trustees, officers, employees, agents and representatives, are hereby permanently enjoined, restrained and prohibited from paying claims, debts or obligations of the Company.

8. All persons and entities, including specifically, the officers, directors, trustees, employees, agents, representatives and shareholders of the Company, are hereby permanently enjoined and restrained from interfering, in any manner, with the Receiver's possession, title and rights in and to the property of the Company and the liquidation thereof. All persons and entities are hereby further enjoined and restrained from wasting, transferring, selling, concealing, destroying, disbursing, disposing, and assigning, in any manner whatsoever, any property of the Company.

9. All parties claiming an secured, collateral, priority or preferred interest in any property of the Company, including any governmental entity, are hereby stayed, enjoined and restrained from taking any action to foreclose, transfer, sell, dispose or otherwise exercise creditors' rights in or against any property of the Company without further order of the Court.

10. All parties who have dealt with the Company including without limitation, claimants, plaintiffs, petitioners, physicians, hospitals , other medial or health care providers and governmental agencies, are hereby enjoined and restrained, until further order of the Court, from:

a. Bringing, maintaining or further prosecuting any judicial or administrative action against the Company or the Receiver;

- b. Attaching, levying or executing against the property of the Company.
- c. Instituting, maintaining or further prosecuting a judicial or administrative action against a member, policyholder or insured of the Company by reason of the Company's insolvency, the failure of the Company to pay any claims or the Company's failure to meet any of its contractual obligations; and
- d. Interfering in any manner with the Receiver's possession and control of Company's, property or the discharge of her duties hereunder.

11. All persons and entities, except the Receiver and her counsel, assistants deputies and clerks, are hereby restrained from commencing, maintaining or further prosecuting any direct or indirect actions against any reinsurance policies issued to the Company.

12. No bank, savings and loan association or other financial institution shall, unless permitted by this Court after notice of hearing: a) exercise any form of setoff, lien, or any form of self help against funds, accounts or other monies of the Company or b) refuse to transfer funds or assets of the Company to the Receiver.

13. The amounts recoverable by the Receiver from any reinsurer of the Company shall not be reduced by reason of this delinquency proceeding, any partial payment or distribution under a reinsured policy, contract or claim. Subject to the provisions of 36 Okla. Stat. §1925(1991), offsets shall be allowed between the Company and its reinsurer(s). Unless either the insurance contract or any applicable statute provides to the contrary,

payment made directly to an insured shall not diminish the reinsurer's obligation to the Company.

14. Any agent, broker, premium finance company or other person responsible for the payment of a premium, excluding the insured, shall pay to the Receiver all unpaid premiums, whether earned or unearned as of the date of this Order, as reflected by the records of the Company. No credit or setoff shall be allowed in favor of such person against his account with the Company for the unearned portion of the premium on any canceled contract or policy unless:

- a. The contract or policy was cancelled prior to the entry of this Order and
- b. the unearned premium on the cancelled contract or policy was in fact refunded or credited to the insured or his or her assigns prior to the entry of this Order. The Receiver shall also have the right to recover from such person any part of an unearned premium which represents a commission to such person.

15. All groups and individual policyholders of the Company shall pay to the Receiver any unpaid earned premium due to the Company, as reflected by the records of the Company.

16. The officers, directors, policyholders, agents, employees, attorneys, accountants, actuarial and any other persons or entities having any property of the Company, including books, records, data processing information and papers, are hereby directed to assign, transfer and deliver the same to the Receiver.

17. Except as otherwise provided in this Order, the rights and liabilities of the Company, its creditors, policyholders, shareholders and all other persons interested in its estate, shall be fixed as of the date of entry of this Order.

18. All insurance policies, bonds or other contracts of insurance issued by the Company in effect on the date of entry of this Order shall automatically terminate upon the earlier of:

- a. 30 days from the date of entry of this Order;
- b. The expiration of the policy coverage pursuant to the terms of the policy; or
- c. The date the insured replaces or terminates the policy.

The termination of policies set forth in this paragraph supersedes any contractual or statutory provisions pertaining to the renewal or cancellation of policies.

19. Notwithstanding the provisions of this Order, the Oklahoma Property and Casualty Insurance Guaranty Association shall remain obligated after entry of this Order for all covered claims against the Company pursuant to the Property and Casualty Insurance Guaranty Association Act, 36 Okla. Stat. §2001 et seq. (1991) All other associations shall be obligated after entry of this Order pursuant to the applicable laws of their respective States.

20. Receiver shall have the power:

- a. To liquidate all property of the Company and wind up the affairs and business of the Company under the general supervision of this Court;
- b. To pay as expenses of administration all expenses heretofore incurred by Receiver, or by her designees and appointees, in contemplation of this delinquency proceeding;
- c. To pay from the funds or assets of the Company all expenses of possessing, conserving, liquidating, disposing or otherwise dealing with the business and property the Company;
- d. To process claims against the Company in accordance with the Act;
- e. To take any action the Receiver deems economically feasible to collect or liquidate all debts, claims and monies to the Company,
- f. To conduct public and private sales of the property of the Company;
- g. To acquire, invest, deposit, hypothecate, encumber, lease, improve, sell, transfer, abandon, or otherwise dispose or deal with property of the Company. Specifically, the Receiver may sell, reinvest, trade or otherwise dispose of any securities or commodities upon such terms and conditions as Receiver deems to be fair and reasonable, irrespective of the value at which such property is carried on the books of the Company. Receiver shall also have the power to execute and deliver deeds, assignments, bills of sale, release and other instruments necessary or appropriate to effectuate the conveyance, sale or mortgage of any real or personal property in connection with this delinquency proceeding;

h. Subject to the limitations of 36 Okla. Stat. §1924 (1991), to borrow money with or without security. Neither the Commissioner nor Receiver shall be under any obligation, personally or in her official capacity, to repay any loan made pursuant to this paragraph;

i. To enter into such contracts as are necessary to carry out this Order and to affirm or disavow any contracts to which the Company is a party;

j. To institute, prosecute and defend, either in the name of the Company or the Receiver, suits and other legal proceedings in this State or elsewhere, in which the Company or Receiver is a party and to settle, dismiss or abandon such suits or legal proceedings at the time and on such terms and conditions as Receiver deems appropriate;

k. To exercise and enforce all rights and prosecute all actions which may exist on behalf of the Company, its creditors, policyholders or shareholders, against an officer, director shareholders, agent or professional of the Company;

l. To remove any or all records and other property of the Company to the offices of Receiver or such other place as may be convenient for the efficient and orderly administration and liquidation of the Company and to destroy, in the ordinary course of business such records and property as Receiver may deem unnecessary. Subject to coordination with the receiver, all guaranty associations and ancillary receivers shall have reasonable access to the records of the Company as may be necessary to discharge their respective statutory obligations;

m. To hire and fire employees of the Company on such terms and conditions as the Receiver deems appropriate and to employ additional persons, including consultants and experts, as the Receiver deems appropriate under the circumstances;

n. To negotiate, settle, compromise and contract with any ancillary receiver or Insurance Commissioner of any other State or with the Oklahoma Property and Casualty Insurance Guaranty Association or any similar organization of another State relating to the liquidation, conservation or dissolution of the Company;

o. To perform such further and additional acts as the Receiver deems necessary or appropriate in the furtherance of this delinquency proceeding, it being the intention of this Order that the aforestated enumeration of powers shall not be construed as a limitation upon the Receiver.

21. All judicial or administrative proceedings, excluding the instant case, in which the Company is a party or is obligated to defend a party in any court are hereby stayed 120 days from entry of this Order.

22. Receiver shall give or cause to be given notice of the entry of this Order as soon as possible:

a. By first class mail to all policyholders of record who had policies in force, to the extent that such are reasonably ascertainable, and to claimants against the Company at their last known address as indicated in the records of the Company;

b. By first class mail to the Insurance Commissioner of each jurisdiction in which the Company is or has done business, either on an admitted or surplus lines basis;

c. By first class mail to any guaranty association which is or may become obligated as a result of the Company's liquidation;

d. By first class mail to current active producers and all current active insurance agents of the Company at their last known address as indicated in the Company's records; and

e. By publication in a national newspaper with circulation which includes the state of Oklahoma. The first publication shall appear prior to February 28, 1994, and shall be repeated once a week thereafter for two successive weeks.

23. The notice served under Paragraph 22 shall require that any person seeking to receive distributions in liquidation as a claimant must file with the Receiver or her designee a proof of claim, together with proper proof of loss, no later than September 30, 1994. The form of the proof of claim, together with the allowance procedure, shall be established in a subsequent Order of the Court. The notice required by paragraph 22 may contain such other rules, regulations and information as Receiver deems necessary for the purpose of fixing and determining all lawful claims and demands against the Company but, at minimum, shall provide:

a. That claimants and policyholders must submit any all actual or potential claims which they may have against the Company; prior to June 30, 1994 and;

b. That prior to April 21, 1994, the Receiver will mail to all claimants and policyholders at their last known address as indicated in the Company's records a form of proof of claim along with applicable rules and regulations governing their filing and the allowance procedure.

24. Guaranty associations may file a blanket proof of claim setting for the aggregate amount of underlying claims paid and to be paid. The Receiver may establish other rules and requirements governing the claims of guaranty associations.

25. If notice is given in accordance with Paragraphs 22 and 23 above, this proceeding, including the distribution of the Company's property, shall be final and conclusive to all policyholders and claimants whether or not they receive actual notice.

26. The Receiver may, in her discretion, permit a claimant to file a late proof of claim, but late filed claims shall not share in the distribution of assets until all timely filed and allowed claims have been paid in full, with interest.

27. Receiver may settle and compromise the amount of a claim with any claimant, except where Receiver is required by law to accept claims filed by certain persons or organizations, including any guaranty association.

28. When all assets justifying the expense of collection and distribution have been collected and distributed under this Order, the Receiver shall apply to the Court for discharge. The Court will make such orders as it deems appropriate at the time.

29. Any person, other than the Receiver, may apply for an order discharging the Receiver; however if such application is denied, the applicant will pay all costs, expenses and attorneys' fees incurred by the Receiver in resisting such application.

30. Existing contracts and other obligations by and between the Company and any reinsurer may, at the discretion of Receiver, be terminated. Such termination shall be effective upon written notice by Receiver to the reinsurer.

31. Any person, corporation or other entity having notice of this order who fails to abide by its terms shall be directed to appear before this Court to show good cause if any they may have, as to why they should not be held in contempt of Court for violation of the provisions of this Order.

32. Receiver may, at any time, make further application for such additional and different relief as Receiver deems appropriate.

ENTERED this 14 day of February, 1994.

Eugene H. Matthews  
JUDGE OF THE DISTRICT COURT

I, TOM PETUSKEY, Court Clerk for Oklahoma County, Okla., hereby certify that the foregoing is a true, correct and complete copy of the instrument herewith set out as appears of record in the District Court Clerk's Office of Oklahoma County, Okla. this day of Feb, 1994.

[Signature]  
TOM PETUSKEY, Court Clerk  
Deputy

APPROVED:

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