

IN THE DISTRICT COURT FOR COMANCHE COUNTY  
STATE OF OKLAHOMA

FILED  
COMANCHE COUNTY

STATE OF OKLAHOMA, ex rel,  
KIM HOLLAND, Insurance Commissioner,

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Petitioner,

v.

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) Case No. CJ-2006-622  
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JOHN W. HODGE d/b/a  
HODGE FUNERAL HOME,

Defendant.

**AGREED ORDER FOR APPOINTMENT OF RECEIVER AND SUBSTITUTE  
TRUSTEE**

Plaintiff, State of Oklahoma, ex rel, Kim Holland, Insurance Commissioner, having filed an Application for Appointment of Receiver pursuant to Okla. Stat. tit. 12, § 1551 et seq., and for substitute trustee pursuant to Okla. Stat. tit. 60, § 175.39, the Court makes the following findings of fact and conclusions of law and enters the following Order:

1. Plaintiff, Kim Holland, is the Insurance Commissioner for the State of Oklahoma and as such is charged with regulating and enforcing all provisions of the Oklahoma Insurance Code, Okla. Stat. tit. 36, §§ 101-6951, including the laws pertaining to regulation of prepaid funeral benefit trust funds, Okla. Stat. tit. 36, §§ 6121-6136.18.
2. Defendant John W. Hodge is a resident of Comanche County and owner of Hodge Funeral Home with locations in Elgin and Fletcher, Oklahoma, and is therefore subject to the personal jurisdiction of this Court.
3. Venue is proper in Comanche County pursuant to Okla. Stat. tit. 12, § 139.
4. John W. Hodge d/b/a Hodge Funeral Home was issued a permit by the Oklahoma Insurance Department pursuant to Okla. Stat. tit. 36, § 6121 authorizing

Defendant to contract for prepaid funeral benefits in connection with Defendant's Fletcher, Oklahoma, location and for the purpose of depositing contract proceeds in a trust fund pursuant to Okla. Stat. tit. 36, § 6125 and to act as trustee for individuals contracting to pre-pay Defendant for funeral merchandise and services.

5. Defendant failed to timely correct his erroneously filed 2004 annual report which is a violation of Okla. Stat. tit. 36, § 6128.

6. Defendant failed to timely file his 2005 annual report which is a violation of Okla. Stat. tit. 36, § 6128.

7. Defendant failed to timely complete and file an annual financial examination of the trust for 2005 in violation of Okla. Stat. tit. 36, § 6129.1.

8. Defendant converted trust funded prepaid funeral benefits to insurance funded prepaid funeral benefits without meeting the requirements of Okla. Stat. tit. 36, § 6136.18.

9. Defendant failed to submit withdrawal forms and statements in violation of Okla. Stat. tit. 36, § 6125.

10. Defendant failed to maintain a letter of credit in violation of Okla. Stat. tit. 36, § 6125.

11. Defendant has created a condition that continued operation of the trust would be hazardous to the trust members and should therefore be removed as trustee.

12. The appointment of a receiver will protect the property of trust participants from further danger of mismanagement of the trust.

13. The order for a receiver goes to the operation of the Hodge Funeral Home Prepaid Funeral Benefits Trust only, and not to any daily functions of the funeral home or

meeting other duties owed by the funeral home other than those directly relating to trust accounts.

### **ORDER**

**IT IS THEREFORE ORDERED THAT** Kim Holland, Oklahoma Insurance Commissioner, is appointed Receiver and Substitute Trustee of the Hodge Funeral Home Prepaid Funeral Benefits Trust to serve without bond and is directed to attempt to rehabilitate the business of the trust, and as Receiver, and Substitute Trustee to:

1. Collect, receive and take exclusive custody, and control, and possession of all records, property and assets of any kind or nature owned beneficially or otherwise by the trust, with full power to sue for, collect, receive and take possession of all bank accounts, brokerage accounts, goods, chattels, rights, deposits, credits, monies, and records of accounts and other papers and property and causes of action of the Hodge Funeral Home Prepaid Funeral Benefits Trust.

2. Conserve, hold and manage all the property subject to this Receivership in order to prevent to the extent possible loss, damage, and injury to the trust beneficiaries who have entered into prepaid funeral benefit contracts with Defendant; to obtain an accounting thereof, and to protect the interest of such beneficiaries and other persons doing business with the trust, as approved by the Court.

3. Make such payments and disbursements from the property subject to this Receivership and to incur such expenses that may be necessary and advisable in discharging her duties as Receiver, and to present to this Court from time to time an accounting of all such payments, disbursements and expenses;

4. Institute, defend, compromise, intervene in, seek stays in, or become a party to such suits, actions or other proceedings at law or in equity as may, in the Receiver's opinion, be necessary for the collection, recovery, protection, maintenance, or preservation of property subject to this Receivership.

**IT IS FURTHER ORDERED THAT** except by leave of this Court, during the pendency of this Receivership, the Defendant and all prepaid funeral benefit contract holders seeking to establish or enforce a claim, right or interest against or on behalf of the trust, and all others acting for or on behalf of such persons including attorneys, trustees, agents, and others be and hereby are stayed from:

5. Commencing, prosecuting, continuing or enforcing any suit or proceeding against the trust except that such actions may be filed to toll any applicable statute of limitations;

6. Commencing, prosecuting, continuing or enforcing any suit or proceeding in the name of or on behalf of the trust;

7. Accelerating the due date of any obligation or claimed obligation, or taking or attempting to take possession of, or retaining possession of, any property of the trust, or attempting to alter or terminate any interest of the trust in any of its property or assets, whether such acts are part of a judicial proceeding or otherwise;

8. Doing any act or thing whatsoever to interfere with the taking control of, possession or management by the Receiver appointed herein of the property subject to this Receivership, or to in any way harass or interfere with said receiver, or to interfere in any manner with the exclusive jurisdiction of this Court over the property and assets of the trust;

**IT IS FURTHER ORDERED THAT:**

9. Except with respect to this action herein, no person will serve or cause to be served upon the Receiver any legal process, including attachments, garnishments, subpoena, writs of replevin, writs of execution and any other form of process whether described specifically herein or not, without first securing the authorization of this Court or the specific written consent of the Receiver;

10. All banks, savings and loan associations, brokerage firms, institution or other person or entity which has on deposit, in its possession, custody or control any funds, accounts, or any other assets of the trust shall immediately transfer title, custody and control of all such funds or assets to the Receiver and are hereby instructed that the Receiver has absolute control over such accounts and other assets and that the Receiver may change the name on such accounts and other assets, may withdraw them from such bank, savings and loan association, brokerage firm, other institution, person or entity, or take any lesser action necessary for the proper conduct of this Receivership. No bank, savings and loan association, brokerage firm, other institution, person, or entity shall exercise any form of set-off, alleged set-off, lien any form of self-help whatsoever or refuse to transfer any funds or assets to the Receiver's control without the permission of this Court.

**IT IS FUTHER ORDERED THAT** the Defendant is hereby enjoined during the pendency of this action from directly or indirectly:


11. Transacting any of the trust's business or the waste or disposition of its assets, or the obtaining of preferences, judgments, attachments, or other liens, or the making of any levy against the trust;

12. Destroying, defacing, transferring, or otherwise altering or disposing of the books, records, accounts, or any other papers of any kind or nature of the trust;

13. Transferring, receiving, altering, selling, encumbering, pledging, signing, liquidating, or otherwise disposing of any assets, funds or property owned, controlled, or in the possession of, or in which an interest is held or claimed by the trust, or the Receiver appointed herein;

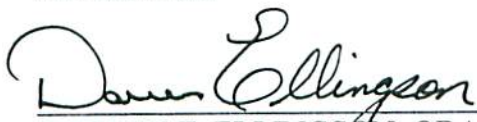
14. Obstructing or interfering with the Receiver appointed pursuant to this Order or her duly authorized agent, in the exercise of their lawful authority under the orders of this Court.

DONE IN OPEN COURT this 9 day of August, 2006.



Judge of the District Court

APPROVED:



DARREN T. ELLINGSON, OBA# 19452  
Oklahoma Insurance Department  
P.O. Box 53408  
2401 N.W. 23<sup>rd</sup> Street, Suite 28  
Oklahoma City, OK 73152-3408  
(405) 947-0022  
(405) 522-0125 (Facsimile)

I, JOAN WILLIAMS, District Court Clerk in and for Comanche County, Oklahoma hereby certify that the foregoing is a true, correct and complete copy of the instrument herewith set out as appears of record in the Court Clerk's office of Comanche County, Oklahoma

this 9 day of Aug 20 06  
JOAN WILLIAMS, District Court Clerk

By  Deputy

Approved:



JOHN W. HODGE  
Defendant