

IN THE DISTRICT COURT FOR OKLAHOMA COUNTY  
STATE OF OKLAHOMA

FILED IN THE DISTRICT COURT  
OKLAHOMA COUNTY, OKL

OCT - 1 2004

PATRICIA PRESLEY, COURT CLERK  
by \_\_\_\_\_  
Deputy

**STATE OF OKLAHOMA, ex rel,  
CARROLL FISHER, Insurance Commissioner,**

Plaintiff,

v.

**HOSPITAL CASUALTY COMPANY, in  
receivership,**

Defendant.

Case No. CJ-2004-6260

**AGREED ORDER OF LIQUIDATION  
WITH A DETERMINATION OF INSOLVENCY**

Now on this 1<sup>st</sup> day of October, 2004, there comes for hearing the Receiver's Application for Determination of Insolvency and for Order of Liquidation. The Receiver appears through counsel Daniel D. Draper, III. Respondent Hospital Casualty Company ("HCC"), appears through counsel Robert F. Craig. Intervenor Oklahoma Property and Casualty Insurance Guaranty Association appears through counsel Larry Derryberry. Prior to appearance for hearing, the parties have met and reached an agreed resolution to the Receiver's Application, said resolution being set forth in this Agreed Order of Liquidation With a Determination of Insolvency.

The Court, having examined the Receiver's Application; having viewed the evidence presented thus far; having heard the arguments, representations and agreements of the parties; and being well advised in the premises, finds as follows:

1. HCC is an Oklahoma domesticated insurance company, whose business practices qualify it as an "insurer" pursuant to Oklahoma law, and subject it to the insurance supervisory authority of, or liquidation, rehabilitation, reorganization or conservation by, the Oklahoma Insurance Commissioner. 36 O.S. § 1901(A).

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2. On July 20, 2004, the Board of Directors of HCC unanimously consented to the entry of an order appointing Carroll Fisher, Oklahoma Insurance Commissioner, as conservator, rehabilitator and/or liquidator of HCC.

3. Pursuant to the Court's August 6, 2004, Agreed Order Placing Insurer Into Receivership and Appointing Receiver and Permanent Injunction, the Court directed that HCC be placed into receivership, appointed Carroll Fisher, Oklahoma Insurance Commissioner, as statutory Receiver, and directed the Receiver to rehabilitate the company.

4. 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.

5. 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 HCC upon the showing of specified grounds, including that the insurer is insolvent, is in a condition such that the continued operation would be hazardous to the policyholders, creditors or the general public; and/or if the company has consented to such an order through a majority of its directors, stockholders, members or subscribers.

6. 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 his 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.

7. Pursuant to 36 O.S. § 1901(1), an insurer shall be deemed to be insolvent when such insurer shall not be possessed of assets at least equal to all liabilities and required reserves together with its total issued and outstanding capital stock.

8. The Receiver and/or the Assistant Receiver has taken custody of and accounted for the remaining assets of HCC. The accounting of the Receiver, as of July 31, 2004, reveals current assets totaling \$28,483,832.24 (excluding doubtful deductible recoveries) and current liabilities, undiscounted, totaling \$89,870,666.67, including \$65,198,792.00 in claims loss reserves and IBNR reserves.

9. This Court has jurisdiction of this action pursuant to 36 O.S. § 1902(A).

10. Venue in this Court is appropriate pursuant to 36 O.S. § 1902(F).

11. Sufficient cause and evidence exists for the entry of this Agreed Order of Liquidation With a Finding of Insolvency against Defendant HCC, including the fact that HCC is statutorily insolvent and its board of directors has unanimously consented to liquidation.

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

1. This Agreed Order of Liquidation With a Determination of Insolvency is hereby entered as to and against HCC. This Agreed Order is a final order.

2. HCC is statutorily insolvent.

3. HCC's board of directors has unanimously consented to liquidation of HCC.

4. The condition of HCC is such that the continued operation would be hazardous to the policyholders, creditors or the general public. The continued transaction of business of HCC will result in the further depletion of HCC assets to the detriment of HCC, and ultimately to the detriment of HCC's policyholders and creditors, and the public.

5. Pursuant to 36 O.S. § 1911, the Receiver shall forthwith take possession of the property of HCC, shall liquidate its business, shall deal with HCC's property and business in the

Receiver's own name as statutory Receiver and/or in the name of HCC, and shall give notice to all creditors who may have claims against HCC 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 HCC 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 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 Hospital Casualty Company.

8. The Receiver is hereby vested by operation of law with the title to all of the property, accounts, assets, contracts, rights of action and all of the books and records of Hospital Casualty Company, wherever located, now or hereafter discovered, as of August 6, 2004.

9. Pursuant to 36 O.S. § 1925, the rights and liabilities of HCC 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 Agreed Order, subject to the provisions otherwise set forth herein with respect to the rights of claimants holding contingent claims.

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

11. All direct policies and/or certificates of insurance heretofore issued by HCC 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:

(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 this Agreed Order of Liquidation with a Determination of Insolvency; 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 Agreed Order of Liquidation with a Determination of Insolvency; or

(iii) Upon the date the insured or policyholder of any such direct policy and/or certificate of insurance requests cancellation, if the insured or policyholder does so within thirty (30) days following the date of entry of this Agreed Order of Liquidation with a Determination of Insolvency.

b. All other direct policies and/or certificates of insurance issued by HCC shall be cancelled effective as of the date of entry of this Agreed Order of Liquidation with a Determination of Insolvency.

12. Pursuant to 36 O.S. § 1923, the Insurance Commissioner 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 August 6, 2004, Agreed Order Placing Insurer Into Receivership and Appointing Receiver, and Permanent Injunction, as modified by the Court's August 25, 2004, Order and Notice of Mandatory Stay, shall remain in effect as set forth and provided for therein.

14. Any and all banks, brokerage houses, financial institutions and any and all other companies, persons or entities having knowledge of this Order and having in its possession accounts or any other assets which are, or may be, the property of HCC 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 HCC; and such banks, brokerage houses, financial institutions, companies, persons or entities having done business or doing business with HCC or having in its possession assets which are, or may be, the property of HCC are ordered to immediately deliver any and all such assets and/or records to the Receiver.

15. All agents, brokers and fronting companies of HCC and their respective agents, servants, representatives and employees, and all other persons having knowledge 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 HCC 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 HCC, as approved by the Court.

17. 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.

Signed and entered this 1<sup>st</sup> day of October, 2004.

**BRYAN C. DIXON**

JUDGE OF THE DISTRICT COURT

I, PATRICIA PRESLEY, 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 1<sup>st</sup> day of Oct, 2004.  
By [Signature] PATRICIA PRESLEY, Court Clerk Deputy

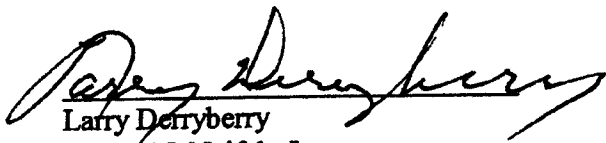
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