

NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
03 CVS 15525

STATE OF NORTH CAROLINA, on)
Relation of JAMES E. LONG,)
COMMISSIONER OF INSURANCE)
OF NORTH CAROLINA,)
)
Petitioner,)
)
v.)
)
COMMERCIAL CASUALTY INSURANCE)
COMPANY OF NORTH CAROLINA,)
)
Respondent.)

ORDER OF LIQUIDATION

FILED
MAR 10 2004
CLERK OF COURT

THIS CAUSE came to be heard and was heard on March 8, 2004, before the undersigned Judge Presiding over the Superior Court of Wake County, North Carolina, upon the Verified Petition filed herein on behalf of the State of North Carolina by the Honorable James E. Long in his capacity as Commissioner of Insurance of the State of North Carolina (Commissioner), seeking the entry of an Order of Liquidation against Commercial Casualty Insurance Company of North Carolina (Commercial Casualty), and injunctive relief. Based upon the evidence presented and the arguments and representations of counsel, the Court makes the following:

FINDINGS OF FACT

1. The Petitioner is the Commissioner of Insurance of the State of North Carolina;

2. The Respondent, Commercial Casualty Insurance Company of North Carolina (Commercial Casualty), is a property and casualty insurance company as defined in Chapter 58 of the General Statutes of North Carolina, is incorporated under the laws of the State of North Carolina and has its registered home office in Charlotte, NC and its executive office in Norcross, GA;

3. On November 17, 2003, this Court entered an Order of Rehabilitation and Preliminary Injunction against the Respondent with the written consent of the Respondent's Directors with the findings that the Respondent was in an impaired financial condition within the meaning of N.C. Gen. Stat. § 58-30-12(a)(2) and that the Respondent was in such condition as to render the continuance of its business hazardous to its policyholders, creditors or the public;

4. Under that Order, the Commissioner has administered the assets of the Respondent in accordance with N.C. Gen. Stat. § 58-30-80, et seq.;

5. Based upon an examination of the Respondent by the Commissioner, as of December 31, 2003, the liabilities of Respondent calculated in accordance with statutory insurance accounting principles exceeded its assets by \$41,441,677 and the Respondent is insolvent as defined N.C. Gen. Stat. § 58-30-10(13);

6. The Respondent is now in such condition as to render the further transaction of its business hazardous to its policyholders, creditors or the public within the meaning of N.C. Gen. Stat. § 58-30-100(3);

7. Further attempts to rehabilitate the Respondent would be futile;

8. The Petitioner is entitled to appointment as liquidator of the Respondent under the provisions of N.C. Gen. Stat. Chapter 58, Article 30; and

9. The actions taken by the directors of the insurer to defend against the petition for liquidation filed on March 1, 2004, were reasonable and the costs and expenses for that defense were incurred by the directors in good faith as contemplated by N.C. Gen. Stat. § 58-30-95.

CONCLUSIONS OF LAW

1. The Petitioner is the Commissioner of Insurance of the State of North Carolina, and has initiated this action in his official capacity on behalf of the State of North Carolina pursuant to N.C. Gen. Stat. §§ 58-30-15, 58-30-20, 58-30-65, 58-30-95, 58-30-100, 58-30-105, and Article 38 of Chapter 1 of the North Carolina General Statutes by filing a Verified Petition For an Order of Liquidation with the Clerk of Superior Court of Wake County;

2. This matter is now subject to the provisions of N.C. Gen. Stat. Chapter 58, Article 30;

3. Grounds for the entry of an Order of Liquidation and preliminary injunctions have been demonstrated by the Petitioner; and

4. The Petitioner is entitled to appointment as liquidator under the provisions of N.C. Gen. Stat. Chapter 58, Article 30.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that:

COMMISSIONER APPOINTED LIQUIDATOR

1. The Honorable James E. Long, in his capacity as Commissioner of Insurance of the State of North Carolina, and his successors in office, is appointed as liquidator of the Respondent, pursuant to the provisions of Article 30 of Chapter 58 of the North Carolina General Statutes;

TITLE OF ASSETS, RECORD NOTICE OF TITLE

2. This Order shall by operation of law vest title of all assets of the Respondent in the liquidator and the filing or recording of this Order with the Clerk of the Superior Court and the Register of Deeds of the county in which the Respondent's principal office or place of business is located; or, in the case of real estate, with the Register of Deeds of the county where the property is located, shall impart the same notice as a deed, bill of sale, or other evidence of

title duly filed or recorded with that Register of Deeds, would have imparted;

POSSESSION AND CONTROL OF ASSETS

3. As liquidator the Commissioner is hereby authorized, empowered and directed to take into his possession and control all property, stocks, bonds, securities, accounts, monies, books, papers, records, microfilm, microfiche, data processing programs, any data base or data base program, printouts and computations (both in existence and stored in memory), electronic, optical or magnetic storage devices or media, tapes, disks or Winchester drives and all other assets of any and all kinds and nature whatsoever belonging to the Respondent, wherever located, to which the liquidator may be entitled by virtue of the provisions of N.C. Gen. Stat. Chapter 58, Article 30, and to administer them under the general supervision of this Court;

OTHER POWERS OF LIQUIDATOR

4. The liquidator shall be vested with such other duties, powers, authorities, and obligations as are provided by N.C. Gen. Stat. Chapter 58, Article 30;

APPOINTMENT OF SPECIAL DEPUTY COMMISSIONER, EMPLOYEES

5. Pursuant to N.C. Gen. Stat. § 58-30-120, the liquidator is authorized to appoint a Special Deputy Commissioner to act for the liquidator in connection with the delinquency proceedings against the Respondent; and the liquidator or said Special Deputy Commissioner is authorized to employ and to discharge such counsel, clerks or assistants as the liquidator or said Special Deputy Commissioner deems to be necessary, or to utilize State employees for said purposes if he has determined that the use of State employees to conduct certain aspects of the liquidation is the most cost effective method of administering the delinquency proceeding and that this action benefits the estate and its creditors; to fix the reasonable compensation for counsel, clerks or assistants or other such personnel, other than State employees, at prevailing customary rates; and to obtain such bonds, errors and omissions type insurance, or excess liability insurance, in addition to that already provided for employees of the Insurance Department, as a reasonably prudent person charged with the duties would deem to be appropriate; that the compensation for the services of the Special Deputy Commissioner, and for counsel, clerks or assistants and

employees, and all expenses of taking possession of the Respondent and of conducting the delinquency proceedings against the Respondent shall be permitted to be paid out of the funds of the Respondent. The Special Deputy Commissioner is authorized, in his discretion, to continue the appointment of Michael J. Johnson and George J. Piccoli as Assistant Special Deputies in this delinquency proceeding;

LIQUIDATOR'S EXPENSES

6. The liquidator is authorized, empowered and directed to incur such expenses for communication and traveling expenses for himself, his agents or attorneys as may be necessary in the proper administration of his duties as liquidator and also to incur such other expenses as the liquidator may deem advisable or necessary in order to properly conduct and perform his duties as liquidator;

INJUNCTION AGAINST INTERFERING WITH LIQUIDATION

7. All persons, firms, corporations, municipalities, counties and the State of North Carolina are hereby enjoined and restrained from interfering in any manner with the property or assets of the Respondent or with said liquidator in the exercise of his duties, and they are further enjoined and restrained from instituting any suit or other action

against the liquidator or the Respondent's property except by the permission of this Court first had and obtained;

STAY OF PENDING ACTIONS

8. That any and all pending actions against the Respondent are hereby stayed effective as of the date of this Order;

INJUNCTION AGAINST ACTIONS BY CREDITORS

9. All persons, firms and corporations receiving actual notice of the Court's Order are hereby stayed from the obtaining of preferences, judgments, attachments, garnishments, or liens against the Respondent or its assets, or the levying of execution or foreclosure against the respondent or its assets, until further order of the Court;

INJUNCTION AGAINST WASTE, TRANSACTION OF BUSINESS

10. The Respondent, its trustees, officers, directors, agents, employees, and all other persons are hereby enjoined and restrained from the disposition, waste or impairment of any of its property or the transaction of further business unless supervised and approved by the liquidator or his agents or deputies until further order of the Court, and all such persons are hereby required to transfer to the liquidator any and all property of the Respondent wheresoever situated;

INJUNCTION AGAINST ALLOWING OBTAINMENT OF PREFERENCES

11. The Respondent, its trustees, officers, agents, servants, employees, directors and attorneys are hereby enjoined and restrained from doing or permitting to be done anything which may allow or suffer the obtainment of preferences, judgments, attachments or other liens, or the initiation of a levy against the Respondent, without prior permission of this Court;

PAYMENT OF COSTS AND EXPENSES INCURRED

12. As provided by N.C. Gen. Stat. § 58-30-95, costs and expenses incurred by the directors for defense against the petition for liquidation shall be paid by the liquidator out of the assets of the Respondent, not to exceed the amounts of \$13,500.00 for legal services and \$15,190.00 for actuarial services, upon receipt of a detailed billing acceptable to the liquidator;

ACCOUNTING AND REPORTING

13. Pursuant to N.C. Gen. Stat. § 58-30-105(e), the liquidator shall make a quarterly report to the Wake County Superior Court and the liquidator shall include in said report a statement of receipts and disbursements to date and a balance sheet; that this accounting shall be filed in duplicate; that one copy shall be filed with the Clerk of

Superior Court and one copy shall be submitted to the Judge presiding over the liquidation; that the requirement of this Order shall be satisfied by filing the accounting as provided and the liquidator shall not be required to seek the Court's approval of said accounting; that this accounting may be amended or supplemented in the liquidator's discretion;

COMMISSIONER'S BOND

14. The official bond of the Petitioner, the Commissioner of Insurance of the State of North Carolina, shall be sufficient to serve for the faithful performance of his duties and obligations herein imposed; and

EFFECTIVE DATE OF ORDER OF LIQUIDATION

15. This Order shall be effective as of the 2nd day of April, 2004.

This cause is retained for such further and other relief as may seem just and proper to this Court.

This the 2nd day of April, 2004.

Judge presiding

CERTIFICATE OF SERVICE

This is to certify that the foregoing ORDER OF LIQUIDATION was this day served upon counsel for Albert Richard Custard by hand delivery to David K. Liggett of the firm Ragsdale, Liggett PLLC.

This date: April 2, 2004.

ROY COOPER
Attorney General

Thomas D. Zweigart
Special Deputy Attorney General