

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

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

Plaintiff,

v.

PEGASUS INSURANCE COMPANY, INC.,

Defendant.

Case No. CJ-2010-5131

Judge: Vicki L. Robertson

FILED IN THE DISTRICT COURT
OKLAHOMA COUNTY, OKLA.
AUG 12 2010
PATRICIA PRESLEY, COURT CLERK
by _____
DEPUTY

**ORDER OF LIQUIDATION
WITH A FINDING OF INSOLVENCY**

Now on this 12th day of August, 2010, there comes before the Court the Receiver's Application for Order of Liquidation ("Application"). The Plaintiff State of Oklahoma, *ex rel.* Kim Holland, Insurance Commissioner, as Receiver appears through counsel Daniel D. Draper, III, and/or Jennifer H. Barrett. Defendant Pegasus Insurance Company, Inc. ("PICI") has advised via counsel that it does not intend to appear or oppose the Application. No objection to the Receiver's Application has been filed by Defendant or any other interested party.

The Court, having examined the Receiver's Application; having reviewed the evidence presented thus far; having heard the arguments, representations and/or agreements of the parties; and being fully advised, finds as follows:

1. This Court has jurisdiction of this action pursuant to 36 O.S. § 1902(A).
2. Venue in this Court is appropriate pursuant to 36 O.S. § 1902(F).
3. Kim Holland 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.

4. PICI is an Oklahoma domesticated insurance company, whose business practices qualify it as an "insurer" pursuant to Oklahoma law, and is subject to the insurance regulatory/supervisory authority of, or to liquidation, rehabilitation, reorganization or conservation by, the Oklahoma Insurance Commissioner pursuant to 36 O.S. § 1901(2).

5. On June 18, 2010, the State of Oklahoma, *ex rel.* Kim Holland, Insurance Commissioner, filed herein her *Petition and Application for Order of Injunctive Relief Appointing Insurance Commissioner as Receiver for Rehabilitation*.

6. Pursuant to the Court's June 22, 2010, *Consent Order of Rehabilitation and Permanent Injunction*, the Court found that PICI is insolvent and a hazard to the policyholders, creditors and the general public; directed that PICI be placed in receivership; appointed Kim Holland, Oklahoma Insurance Commissioner, as statutory Receiver; and directed the Receiver to rehabilitate the company.

7. Pursuant to 36 O.S. § 1910(B), the Receiver may apply to the Court for an Order of Liquidation if at any time she deems that further efforts to rehabilitate the insurer would be useless.

8. 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 PICI 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 has failed to comply with an order of the Insurance Commissioner to make good an impairment of capital or surplus or both. PICI currently meets all of the aforesaid criteria.

9. 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.

10. The Receiver (and/or the Receiver's assistants/appointees) has taken custody of and accounted for the books and records and remaining assets of PICI. Since entry of the *Consent Order of Rehabilitation and Permanent Injunction*, the Receiver has actively attempted to rehabilitate, market and/or sell PICI.

11. The Receiver has determined that PICI cannot be rehabilitated and, to date, efforts to sell PICI have not been successful. The continuation of these efforts any further are not reasonably likely to succeed. Further, the expenditure/burn rate of estate assets makes it prohibitive to continue rehabilitation and/or sale efforts any further.

12. The continued transaction of business of PICI will result in the further depletion of limited remaining PICI assets to the detriment of PICI, and ultimately to the detriment of PICI's policyholders, creditors and the public.

13. Sufficient cause and evidence exists for the entry of this Order of Liquidation against Defendant PICI, including the fact that PICI is statutorily insolvent.

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

1. This Order of Liquidation is hereby entered as to and against PICI. This Order is a final order.

2. PICI is statutorily insolvent.

3. PICI has failed to comply with an order of the Insurance Commissioner to make good an impairment of capital or surplus, or both. The condition of PICI is such that the continued operation would be hazardous to the policyholders, creditors or the general public. The continued

transaction of business of PICI will result in the further depletion of PICI assets to the detriment of PICI, and ultimately to the detriment of PICI's policyholders and creditors, and the public.

4. PICI cannot be rehabilitated and efforts to sell PICI have not been successful. The continuation of these efforts any further are not reasonably likely to succeed. Further, the expenditure/burn rate of PICI estate assets makes it prohibitive to continue rehabilitation and/or sale efforts any further.

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

8. 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 PICI, wherever located, now or hereafter discovered.

9. Pursuant to 36 O.S. § 1925, the rights and liabilities of PICI 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.

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

11. All direct policies not previously cancelled, non-renewed or otherwise terminated and/or certificates of insurance heretofore issued by PICI 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 (31st) day following the date of entry of this Order of Liquidation; 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 Order of Liquidation; or
 - (iii) Upon the date the insured or policyholder of any such direct policy and/or certificate of insurance on request pursuant to policy provisions effects cancellation, if the insured or policyholder does so within thirty (30) days following the date of entry of this Order of Liquidation.
- b. All other direct policies and/or certificates of insurance issued by PICI shall be cancelled effective as of the date of entry of this Order of Liquidation.
 - c. Further, the aforementioned is predicated and contingent upon premium payments continuing to be paid when due during the post-liquidation cancellation period, without regard to any pre-liquidation offsets (if allowable by law) for deposits claimed to be held by PICI or its parent/holding company; otherwise the policy shall cancel/terminate upon non-payment of premium pursuant to policy provisions.

12. 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 her, whether or not such paper or instrument be executed by the Insurance Commissioner or her 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 *Consent Order of Rehabilitation and Permanent Injunction* shall remain in effect as set forth and provided for therein and/or as set forth herein.

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

15. All agents, brokers and fronting companies of PICI 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 PICI 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 PICI as approved by the Court.

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

18. As Receiver, the Insurance Commissioner may appoint one or more assistant commissioners or receivers to act for her and may employ such counsel, clerks, and assistants as she deems necessary. The Receiver's selection of Richard Darling as Assistant Receiver and Draper Law Firm as Counsel for the Receiver, is hereby approved and reaffirmed. The Receiver's use of state employees in connection with this action is hereby approved and reaffirmed, and reimbursement to the Oklahoma Insurance Department for the actual cost to the Department of the salary and benefits of such employees is hereby approved as a Class I expense of the estate. The compensation of the assistant commissioners or receivers, counsel, clerks, or deputies, and all expenses of taking possession of PICI, 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 PICI, 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).

19. 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.

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

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

22. PICI, 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 PICI to the Receiver.

23. PICI's officers and directors are hereby terminated and any/all their authority is revoked/withdrawn.

24. 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 PICI; and are further enjoined and prohibited from prosecuting any pending action or litigation involving PICI (whether as a plaintiff or defendant or insurer/indemnitor thereto); obtaining any preferences, judgments, attachments, or other liens against

PICI; making any levy against PICI or against its assets or any part thereof; or interfering with the Receiver and/or these receivership proceedings.

25. Any amounts recovered or recoverable from a contractor, reinsurer, or other insurer of PICI shall not be reduced as a result of this Order or this delinquency proceeding.

26. 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.

27. Regarding reinsurance, along with the powers afforded the Receiver in the OUILA, the Court order as follows:

- a. Assumed: All contracts, treaties and agreements of reinsurance wherein PICI was, or is, the assuming or retrocessional reinsurer are hereby cancelled on a cut-off basis, such cancellations to be effective upon the date of entry of this Order.
- b. Ceded: All contracts, treaties and agreements of reinsurance wherein PICI is the ceding company shall remain in full force and effect pending a determination and recommendation by the Receiver as to when, and upon what terms, cancellation is appropriate.
- c. Title: The Receiver is hereby vested with the rights, title and interest in all funds recoverable under treaties, contracts and agreements of reinsurance heretofore entered into by or on behalf of PICI as the ceding insurer. All reinsurance companies involved with PICI are hereby restrained and enjoined from making any settlement with any claimant or policyholder of PICI, or any other person, other than the Receiver, except with the written consent of the Receiver.

28. Pursuant to 36 O.S. § 1707(3), the Court orders that PICI's \$500,000.00 security deposit currently on deposit with the State of Oklahoma shall immediately be released and tendered to the Receiver.

29. All rights, duties and powers of the Receiver set forth in the *Consent Order of Rehabilitation and Permanent Injunction* are reaffirmed. The injunctive relief set forth in the *Consent Order of Rehabilitation and Permanent Injunction* shall continue and is reaffirmed. All findings and rulings of the Court set forth in the *Consent Order of Rehabilitation and Permanent Injunction* are reaffirmed.

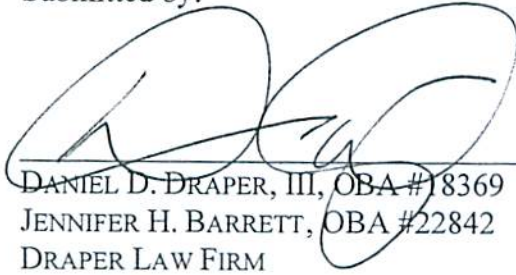
30. The Court further enjoins and orders that all claims and/or litigation involving PICI and/or for which PICI may be required or requested to pay under any policy of insurance be stayed pending activation/engagement of the respective state guaranty associations and assumption of the claims and/or litigation by said guaranty associations. In accordance with the Oklahoma Property and Casualty Insurance Guaranty Association Act (36 O.S. § 2020) and/or similar statutes in other states governing the states' respective guaranty association, all proceedings in which PICI, its policyholder(s), or any guaranty association (in this state or another state in which PICI is licensed) is a party shall be stayed one hundred twenty (120) days (or the time period set forth in any similar statute in other states) from the date of this Order of Liquidation to permit proper legal action by the guaranty association on any matters germane to its powers and duties. As to judgment under any decision, order, verdict or finding based on default, the guaranty association may apply to have such judgment set aside by the same court that made such judgment and shall be permitted to defend against such suit on the merits.

Signed the 12th day of August, 2010.

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 12 day of August, 2010.
PATRICIA PRESLEY, Court Clerk
BY [Signature] Deputy

[Signature]
JUDGE OF THE DISTRICT COURT

Submitted by:



DANIEL D. DRAPER, III, OBA #18369

JENNIFER H. BARRETT, OBA #22842

DRAPER LAW FIRM

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ATTORNEYS FOR PLAINTIFF STATE OF OKLAHOMA, *ex rel.*

KIM HOLLAND, Insurance Commissioner,

in her capacity as Receiver for Pegasus Insurance Company, Inc.

CERTIFICATE OF SERVICE

I hereby certify that I have this 12th day of August, 2010, ___ faxed ___ E-mailed ___X___ mailed a true and correct copy of the above and foregoing document with proper postage prepaid thereon to:

Richard S. Darling, Assistant Receiver
Darren T. Ellingson, Deputy Receiver
Office of the Assistant Receiver
P.O. Box 700022
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J. Angela Ables
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