

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

JUDGE RITA M. NOVAK
APR 27 2011
Circuit Court-1741

PEOPLE OF THE STATE OF ILLINOIS, *ex rel.*,
MICHAEL T. McRAITH, DIRECTOR OF
INSURANCE OF THE STATE OF ILLINOIS,

Plaintiffs,

v.

NO. 10 CH 6207

REINSURANCE COMPANY OF AMERICA, INC.
an Illinois stock insurance company

Defendant.

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

THIS CAUSE COMING TO BE HEARD by the Court, counsel for the The People Of The State Of Illinois, upon the relation of MICHAEL T. McRAITH, Director of Insurance of the State of Illinois Court, counsel for the Conservator appearing before the Court, the Court having jurisdiction over the parties and the subject matter, the Court having heard from counsel and being otherwise fully advised in the premises, and for good cause appearing therefore;

THE COURT HEREBY FINDS THAT:

1. Sufficient cause exists for the entry of an order for liquidation of the Defendant, RCA, including that RCA's sole stockholder, NEH, has consented to the entry of this order of

liquidation, and RCA is insolvent and its further transaction of business would be hazardous to its policyholders, creditors or to the public; and

2. Pursuant to Section 191 of the Code, 215 ILCS 5/191, the entry of this Order creates an estate comprising of all of the liabilities and assets of RCA; and

3. This Order is an interlocutory order appealable as of right pursuant to Illinois Supreme Court Rule 307(a)(5); and

4. Liquidator's statutory authority includes, without limitation, the following:

- a. Pursuant to Section 191 of the Code, 215 ILCS 5/191, the Liquidator is vested by operation of law with the title to all property, contracts, and rights of action of RCA; and
- b. Pursuant to Section 191 of the Code, 215 ILCS 5/191, the Liquidator is entitled to immediate possession and control of all property, contracts, and rights of action of RCA; and
- c. Pursuant to Section 191 of the Code, 215 ILCS 5/191, the Liquidator is authorized to remove any and all records and property of RCA to his possession and control or to such other place as may be convenient for purposes of the efficient and orderly administration of RCA's liquidation; and
- d. Pursuant to Section 193(1) of the Code, 215 ILCS 5/193(1), the Liquidator is authorized to deal with the property, business and affairs of RCA in his name, as Director, and that the Liquidator is authorized to deal with the property, business and affairs of RCA in the name of RCA; and
- e. Pursuant to Section 193(2) of the Code, 215 ILCS 5/193(2), the Liquidator, without the prior approval of the Court, is authorized to sell or otherwise dispose

of any real or personal property of RCA, or any part thereof, and to sell or compromise all debts or claims owing to RCA having a value in the amount of Twenty-Five Thousand (\$25,000.00) Dollars, or less. Any such sale by the Liquidator of the real or personal property of RCA having a value in excess of Twenty-Five Thousand (\$25,000.00) Dollars, and sale or compromise of debts owing to RCA by the Liquidator where the debt owing to RCA exceeds Twenty-Five Thousand (\$25,000.00) Dollars shall be made subject to the approval of the Court; and

- f. Pursuant to Section 193(3) of the Code, 215 ILCS 5/193(3), the Liquidator is authorized to bring any action, claim, suit or proceeding against any person with respect to that person's dealings with RCA including, but not limited to, prosecuting any action, claim, suit, or proceeding on behalf of the policyholders, members, beneficiaries or creditors of RCA; and
- g. Pursuant to Section 193(4) of the Code, 215 ILCS 5/193(4), the Liquidator may solicit contracts whereby a solvent company agrees to assume, in whole or in part, or upon a modified basis, the liabilities of RCA owing to former policyholders and creditors; and
- h. Pursuant to Section 194 of the Code, 215 ILCS 5/194, the rights and liabilities of RCA, and of its policyholders, persons asserting claims against such policyholders, creditors, stockholders and all other persons interested in RCA's assets are fixed as of the date of the entry of the order of liquidation prayed for herein, except as provided in Paragraph G below; and

- i. Pursuant to Section 194(b) of the Code, 215 ILCS 5/194(b), the Liquidator may, within two (2) years after the entry of the liquidation order prayed for herein or within such further time as applicable law permits, institute an action, claim, suit, or proceeding upon any cause of action against which the period of limitation fixed by applicable law had not expired as of the filing of the complaint upon which said order was entered; and
- j. Subject to the provisions of Section 202 of the Code, 215 ILCS 5/202, the Liquidator is authorized to appoint and retain those persons specified in Section 202(a) of the Code, 215 ILCS 5/202(a), and to pay, without the further order of this Court, from the assets of RCA, all administrative expenses incurred during the course of the liquidation of RCA; and
- k. Pursuant to Section 203 of the Code, 215 ILCS 5/203, the Liquidator shall not be required to pay any fee to any public officer for filing, recording or in any manner authenticating any paper or instrument relating to any proceeding under Article XIII of the Illinois Insurance Code, 215 ILCS 5/187, *et seq.*, nor for services rendered by any public officer for serving any process; and
- l. Pursuant to the provisions of Section 204 of the Code, 215 ILCS 5/204, the Liquidator may seek to avoid preferential transfers of RCA's property and to recover such property or its value, if it has been converted; and
- m. Pursuant to Section 209(5) of the Code, 215 ILCS 5/209(5), the obligation of RCA, if any, to defend or continue the defense of any claim or suit under a liability insurance policy shall terminate upon the entry of the order of liquidation prayed for herein.

THE COURT HEREBY ORDERS THAT:

A. Michael T. McRaith, Director of Insurance of the State of Illinois, and his successors in office, is affirmed as the statutory Liquidator (the "Liquidator") of RCA, with all of the powers appurtenant thereto.

B. The Liquidator, subject to the further orders of the Court, is authorized to take such actions as the nature of the cause and the interests of RCA, its policyholders, beneficiaries, creditors, or the public may require including, but not limited to, the following:

- i. The Liquidator is directed and authorized to take immediate possession and control of the property, books, records, accounts, business and affairs, and all other assets of RCA, and of the premises occupied by RCA for the transaction of its business, and to take such action as the nature of this cause and the interests of RCA's policyholders, beneficiaries, creditors or the public may require, subject to further orders of the Court, pursuant to the provisions of Article XIII of the Code, *supra*; and directing and authorizing the Liquidator to liquidate, wind down, or terminate RCA's business and affairs, and to make the continued expenditure of such wages, rents and expenses as he may deem necessary and proper for the administration of the liquidation of RCA; and
- ii. The Liquidator is authorized to sue, defend, and settle claims on behalf of RCA, or for the benefit of RCA's policyholders, beneficiaries, members and creditors, in the courts either in his name as the Liquidator of RCA, or in the name of RCA.

C. The Director is vested with the right, title and interest in all funds recoverable under treaties and agreements of excess insurance or reinsurance heretofore entered into by or on behalf of RCA, and that all excess insurance or reinsurance companies involved with RCA be restrained and

enjoined from making any settlements with any claimant or policyholder of RCA, or any other person, other than the Director as Liquidator, except with the written consent of the Director.

D. The caption in this cause and all pleadings filed in this matter shall hereafter read:

**"IN THE MATTER OF THE LIQUIDATION
OF REINSURANCE COMPANY OF AMERICA, INC."**

E. All costs of the proceedings prayed for herein shall be taxed and assessed against the RCA.

F. Pursuant to its authority under Section 189 of the Code, 215 ILCS 5/189, the Court issues the following mandatory and prohibitive injunctions:

i. In accordance with Section 191 of the Code, *supra*, all persons, companies, and entities shall immediately release their possession and control of any and all property, contracts, and rights of action of RCA to the Director including, but not limited to, bank accounts and bank records, premium and related records, and claim, underwriting, accounting and litigation files, as follows:

a. All accountants, auditors, actuaries, and attorneys of RCA having knowledge of the order of liquidation be ordered to deliver to the Liquidator, at his request, copies of all documents in their possession or under their control concerning or related to RCA, and to provide the Liquidator with such information as he may require concerning any and all business and/or professional relationships between them and RCA, and concerning any and all activities, projects, jobs and the like undertaken and/or performed by them at the request of RCA, or its respective agents, servants, officers, trustees, directors and/or employees, or which RCA

may be, or is, entitled to as the result of its relationship with such accountants, auditors, actuaries, and attorneys; and

- b. RCA and its respective, directors, officers, agents, third party administrators, servants, representatives, employees, and affiliated companies, and all other persons and entities having knowledge of the order of liquidation be ordered to give immediate possession and control to the Liquidator of all property, business, books, records and accounts of RCA, and all premises occupied by RCA for the transaction of its business; and
 - c. All banks, brokerage houses, financial institutions and any and all other companies, persons or entities having knowledge of the order of liquidation be ordered to immediately deliver any and all such assets and/or records to the Liquidator; and
 - d. RCA's agents, representatives, employees and servants having knowledge of the order of liquidation be ordered to immediately turn over all such funds in their possession or under their control, or to which they may hereafter acquire possession or control, to the Liquidator in gross and not net of any commissions which may be due thereon; and
- ii. RCA and its respective, directors, officers, agents, servants, representatives and employees, and all other persons and entities having knowledge of the order prayed for herein be enjoined and restrained from transacting any business of RCA, or disposing of any company property or assets, without the express written consent of the Liquidator, or doing or permitting to be done any action which

might waste the property or assets of RCA, until the further order of the Court;
and

- iii. The directors, officers, agents, third party administrators, servants, representatives and employees of RCA, and all other persons and entities, including RCA's policyholders and creditors, having knowledge of the order prayed for herein be enjoined and restrained from bringing or further prosecuting any claim, action or proceeding at law or in equity or otherwise, whether in this State or elsewhere, against RCA, or its property or assets, or the Director as its Liquidator, except insofar as those claims, actions or proceedings arise in or are brought in the liquidation proceedings prayed for herein; or from obtaining, asserting or enforcing preferences, judgments, attachments or other like liens, including common law retaining liens, or encumbrances or the making of any levy against RCA, or its property or assets while in the possession and control of the Liquidator, or from interfering in any way with the Liquidator in his possession or control of the property, business, books, records, accounts, premises and all other assets of RCA, until the further order of the Court; and
- iv. Any and all banks, brokerage houses, financial institutions and any and all other companies, persons or entities having knowledge of the order prayed for herein, having in its possession accounts and any other assets which are, or may be, the property of RCA, be enjoined and restrained from disbursing or disposing of said accounts and assets and be further restrained from disposing of or destroying any records pertaining to any business transaction between RCA, and such banks, brokerage houses, financial institutions, companies, persons or entities having

done business, or doing business, with RCA, or having in its possession assets which are, or may be, the property of RCA; and

- v. All agents and brokers of RCA, and their respective agents, servants, representatives and employees, and all other persons, be enjoined and restrained from returning any unearned premiums or any money in its possession, or under its control, collected from premiums, contributions or assessments upon policies, contracts or certificates of insurance or reinsurance previously issued by RCA, to policyholders, beneficiaries, members or others; and
- vi. All policyholders and beneficiaries under policies or certificates of insurance issued by RCA, persons asserting claims against such policyholders, beneficiaries, and creditors of RCA, and all other persons, companies and entities be enjoined and restrained from instituting or pursuing any action or proceeding in any court or before any administrative agency, including boards and commissions administering worker's compensation or occupational diseases or similar laws of the State of Illinois, or any other state, or of the United States, which seek in any way, directly or indirectly, to contest or interfere with the Liquidator's exclusive right, title and interest to funds recoverable under treaties and agreements of reinsurance or excess insurance heretofore entered into by or on behalf of RCA; and
- vii. All insurance and reinsurance companies and entities that assumed liabilities from RCA arising under either contracts, policies of insurance, certificates of insurance, or contracts of reinsurance issued by RCA, be enjoined and restrained from making any settlements with any claimant or policyholder of RCA, or any

other person other than the Liquidator, except with the written consent of the Liquidator, except when the reinsurance agreement, certificate, contract or treaty lawfully provides for payment to or on the behalf of RCA's insured by the reinsurer.

G. All direct policies and/or certificates of insurance heretofore issued by RCA are hereby canceled upon the following terms:

- i. All direct policies and/or certificates of insurance which may give rise to "covered claims," as defined in Sections 534.3 and 537.2 of the Code, 215 ILCS 5/534.3 and 537.2, of the Illinois Insurance Guaranty Fund 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:
 - a. 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 effective date of the Agreed Order of Liquidation; or
 - b. Upon the expiration date of any such direct policy and/or certificate of insurance, if the expiration date is less than thirty-one (31) days after the effective date of the Agreed Order of Liquidation; or
 - c. Upon the date the insured or policyholder of any such direct policy and/or certificate of insurance replaces the direct policy and/or certificate of insurance, or upon the date the policyholder or insured on request effects cancellation, if the insured or policyholder does so prior to the thirty-first (31st) day following the effective date of the Agreed Order of Liquidation, whichever is earlier;

ii. All other direct policies and/or certificates of insurance issued by RCA shall be cancelled effective upon the entry date of this Order of Liquidation; and

H. The Court's February 16, 2010 Order of Conservation of Assets entered as to and against RCA, and the conservation proceedings arising therefrom, are hereby ^{terminated} and

I. The Court retains jurisdiction in this cause for the purpose of granting further relief as the nature of this cause and the interests of RCA, its policyholders, beneficiaries, and creditors, or of the public, may require and/or as the Court may deem proper in the premises.

JUDGE RITA M. NOVAK
ENTERED:
APR 27 2011

Circuit Court Judge Presiding

LISA M. MADIGAN
Attorney General of the
State of Illinois
Attorney for the PEOPLE OF
THE STATE OF ILLINOIS
Michael Arnold
Assistant Attorney General
James R. Thompson Center
100 West Randolph Street, 12th Floor
Chicago, Illinois 60601
(312) 814-4491
Attorney Code #99000

Of Counsel:

Daniel A. Guberman
Counsel to the Director as Receiver
222 Merchandise Mart Plaza
Suite 1450
Chicago, IL 60654
(312) 836-9500
Attorney Code #16819