

Cause Number D-1-GV-03-004537

STATE OF TEXAS	§	IN THE DISTRICT COURT OF
	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
HIGHLANDS INSURANCE COMPANY	§	53RD JUDICIAL DISTRICT

**ORDER APPOINTING LIQUIDATOR
AND PERMANENT INJUNCTION**

On this day, the Court heard the *Application for Order of Liquidation* (Application) filed by Prime Tempus, Inc. as the Special Deputy Receiver (SDR) of Highlands Insurance Company (Highlands). The Application requests an order placing Highlands into liquidation pursuant to TEX. INS. CODE Chapter 443 (the Insurer Receivership Act), appointing the Texas Commissioner of Insurance (Commissioner) as Liquidator of Highlands (Liquidator). The Application also requests a Permanent Injunction pursuant to TEX. INS. CODE § 443.008.

In accordance with the *Amended Order of Reference to Master* entered on November 4, 2005 (Order of Reference), the Application was submitted to the Master appointed in this cause. The Master issued a recommendation pursuant to Rule 171 of the Texas Rules of Civil Procedure, which is incorporated herein, finding and recommending that:

- a. Further efforts to rehabilitate Highlands would be futile, and would substantially increase the risk of loss to its policyholders, creditors and to the general public;
- b. Highlands should be declared insolvent;
- c. Grounds exist to place Highlands in liquidation;
- d. Proper notice of the Application was given; and
- e. The Application should be granted in all respects.

Having considered the Application, the evidence submitted, and the recommendation of the Master, the Court accepts the Master's recommendation and grants the Application.

It is therefore ORDERED, ADJUDGED and DECREED as follows:

I. FINDINGS OF FACT

- 1.1 Further attempts to rehabilitate Highlands would be futile, and the continued operation of Highlands would be hazardous to policyholders, creditors, and the public, and would substantially increase the risk of loss to them.
- 1.2 Highlands is insolvent as defined in TEX. INS. CODE § 443.004(a)(13) as it does not have admitted assets at least equal to all its liabilities.
- 1.3 Notice of the Application was given to all persons required to be on the Certificate of Service in accordance with TEX. INS. CODE § 443.007 and the Order of Reference.

II. CONCLUSIONS OF LAW

- 2.1 This Court has jurisdiction over the parties and the subject matter of this action under TEX. INS. CODE § 443.005(c).
- 2.2 Grounds exist to place Highlands into liquidation.
- 2.3 An order of liquidation must be entered in accordance with TEX. INS. CODE § 443.058, and the Commissioner must be appointed as Liquidator of Highlands.
- 2.4 Pursuant to TEX. INS. CODE § 443.151(a), the Liquidator shall take possession and control of Highlands' Property, wherever located.
- 2.5 The Liquidator has all the powers formerly held by Highlands' directors, officers and managers, and the authority of such persons are suspended except as specifically permitted by the Liquidator or his designees.
- 2.6 It is necessary for this Court to issue a permanent injunction pursuant to TEX. INS. CODE § 443.008(a) to carry out the provisions of TEX. INS. CODE Chapter 443.
- 2.7 Pursuant to TEX. INS. CODE § 443.008(c), an automatic stay remains in effect with respect to actions against Highlands or its property, effective on the commencement of this proceeding. In accordance with TEX. INS. CODE § 443.008(f), the stay of actions against

Highlands is in effect for the duration of this proceeding, and the stay of actions against Highlands' property is in effect as long as the property belongs to the receivership estate.

III. APPOINTMENT OF LIQUIDATOR

The Commissioner is appointed as Liquidator of Highlands, and granted the following duties and powers:

- 3.1 The Liquidator has all powers and authority granted by the *Insurer Receivership Act* and all other powers and authority under applicable statutes and the common law of this State.
- 3.2 Pursuant to TEX. INS. CODE § 443.151(a), the Liquidator is vested by operation of law with title to all of Highlands' property as defined in TEX. INS. CODE § 443.004(a)(20) and records as described in TEX. INS. CODE § 443.017(a). Such property shall include property of any kind or nature, whether real, personal, or mixed, including but not limited to money, funds, cash, cash equivalents, stock, bonds, account deposits, money market or investment accounts, statutory deposits, special deposits, contents of safe deposit boxes, funds held in shared, escrow or trust accounts, retainages and retainers, letters of credit, real estate, fixtures, furniture, equipment, books, records, documents data, papers, insurance policies, claim files, attorney's files and work product, accountant's files and work product, and all other records of Highlands, in whatever medium or form maintained or whatever nature, intellectual property, computer software and systems, information technology, internet domain names, patents and intangible assets, whether owned individually, jointly, or severally, wherever located, and all rights, claims or causes of action belonging to Highlands, whether asserted or not, including but not limited to accounts receivable, notes, premiums, subrogation, insurance and reinsurance proceeds, rights to premiums and funds held on Highlands' behalf by its agents, and all licenses held by Highlands (collectively,

Highlands' Property). The Liquidator's title shall extend to Highlands' Property, regardless of the name in which such items are held, where such items are located or whether such items are in the possession, custody and control of a managing general agent, third-party administrator, management company, data processing company, software development, maintenance or servicing company, attorney, accountant, affiliate, subsidiary, or other representative of Highlands. The Liquidator is authorized to take control and possession of Highlands' Property, wherever located.

- 3.3 The Liquidator is authorized to enter into any contracts necessary to perform the Liquidator's duties, at his discretion, pursuant to TEX. INS. CODE § 443.154(a).
- 3.4 The Liquidator is authorized to supervise, suspend, terminate, or dismiss any or all managers, employees, or agents of Highlands, or retain such persons at his discretion, and compensate them as he deems necessary from the Highlands' funds.
- 3.5 The Liquidator has all of rights of Highlands or the Rehabilitator as the customer of a financial institution. The Liquidator is authorized to withdraw Highlands' Property from any banks, financial institutions and other depositories, agencies of any state or the federal government, or any other entities, and close such accounts at his discretion. The Liquidator is authorized to continue the operation of any accounts of Highlands or the Rehabilitator, including but not limited to accounts from which payments of claims under policies of insurance are issued, at his discretion.
- 3.6 The Liquidator is entitled to possession of any records related to Highlands held by Highlands' attorneys, accountants, managing general agents, third-party administrators, management companies, data processing companies, software development, maintenance

or servicing company, affiliates, subsidiaries, representatives or any other service providers under any agreements or other arrangements.

- 3.7 The Liquidator is authorized to file, prosecute, defend, or settle any action as he deems necessary, including any action to enforce the provisions of this Order.
- 3.8 The Liquidator may assume or reject any executory contract or unexpired lease to which Highlands is a party at his discretion pursuant to TEX. INS. CODE §443.013.
- 3.9 The Liquidator is authorized to exclude any person from any property owned, leased, or occupied by Highlands, at his discretion.
- 3.10 The Liquidator is authorized to receive, collect, control, open and review all mail addressed to or intended for Highlands, or arriving at Highlands' address.
- 3.11 Highlands and Highlands' agents shall be required to cooperate with the Liquidator and his designees pursuant to TEX. INS. CODE § 443.010.
- 3.12 The Liquidator is authorized to appoint special deputies and employ or contract with legal counsel and other personnel as he deems necessary under TEX. INS. CODE § 443.154(a). The SDR and any successor shall have all the rights and powers of the Liquidator, subject to any limitations imposed by the Liquidator. Pursuant to TEX. INS. CODE § 443.015, the Liquidator is authorized to set the compensation of the SDR or other persons as he deems necessary and pay for such services from Highlands' funds.
- 3.13 Pursuant to TEX. INS. CODE § 443.008(m), the Commissioner is not required to file a bond in connection with this proceeding, in his capacity as Liquidator or otherwise.
- 3.14 In the event a successor to the Commissioner is appointed, the successor shall become the Liquidator upon his or her appointment as Commissioner, and the former Commissioner shall be discharged as Liquidator as a matter of law.

- 3.15 The enumeration of the Liquidator's powers and authority in this Order shall not be construed as a limitation on the Liquidator to take any other action authorized by the *Insurer Receivership Act* or other applicable law that is not specified in this Order.

IV. PERMANENT INJUNCTION

The Clerk of this Court shall issue a Permanent Injunction against the persons and entities named below, with the following force and effect:

TO: Highlands and its agents, including but not limited to:

Highlands, its current and former officers, directors, underwriters, managers, and employees; owners, affiliates, and related entities; local recording agents, managing general agents, agents, third party administrators, representatives, associates, servants, adjusters, actuaries attorneys and accountants (including those acting in concert with them);

Financial institutions, including but not limited to:

Any and all banks, savings and loan associations; trust companies; credit unions; welfare trusts; or any other financial or depository institutions or brokerage in the possession of any of Highlands' property; and

All other parties, including but not limited to:

Creditors, claimants, insurers, intermediaries, attorneys, accountants, accounting firms, tax return preparation firms and all other persons, associations, corporations, or any other legal entities asserting claims or causes of action against Highlands, or in possession of any of Highlands' Property, and the United States Postmaster.

Each of you are hereby RESTRAINED and ENJOINED from taking any and all of the following actions:

- 4.1 Doing, operating, or conducting Highlands' business under any charter, certificate of authority, license, permit, power, or privilege belonging to or issued to Highlands, or exercising any direction, control, or influence over Highlands' business, except through the authority of the Liquidator or his designees;
- 4.2 Transacting any business of Highlands in any manner except through the authority of the Liquidator or his designees;

- 4.3 Wasting, disposing of, converting, dissipating, or concealing, in any manner, any of Highlands' Property;
- 4.4 Using, releasing, transferring, selling, assigning, canceling, hypothecating, withdrawing, allowing to be withdrawn, offsetting, asserting ownership of, concealing, in any manner, or removing from this Court's jurisdiction or from Highlands' places of business, any of Highlands' Property, or any other items purchased by Highlands, or any items into which such property has been transferred, deposited or placed, or any other items owned by Highlands, wherever located, except through the authority of the Liquidator or his designees;
- 4.5 Releasing, transferring, selling, assigning, or asserting ownership of, in any manner, any claims, accounts receivable, or causes of action belonging to Highlands, whether asserted or not, except through the authority of the Liquidator or his designees;
- 4.6 Doing anything, directly or indirectly, to prevent the Liquidator or his designees from gaining access to, acquiring, examining, or investigating any of Highlands' Property or any other property, books, documents, records, or other materials concerning Highlands' business, under whatever name they may be found;
- 4.7 Obstructing or interfering in any way with the conduct of this proceeding or any incidental investigation as prohibited by TEX. INS. CODE § 443.010(b);
- 4.8 Intervening in this proceeding for the purpose of obtaining a payment from the receivership estate of Highlands as prohibited by TEX. INS. CODE § 443.005(i);
- 4.9 Making any claim, charge or offset, or commencing or prosecuting any action, appeal, or arbitration, including administrative proceedings, or obtaining any preference, judgment, attachment, garnishment, or other lien, or making any levy against Highlands, Highlands' Property or any part thereof, or against the Liquidator, except as otherwise permitted by the *Insurer Receivership Act*.

IT IS FURTHER ORDERED that each of you shall make available and disclose to the Liquidator or his designees the nature, amount, and location of Highlands' Property, and immediately surrender all such property to the Liquidator or his designees. Highlands' attorneys, accountants, affiliates, managing general agents, third-party administrators, management companies, data processing companies, software developer, maintenance or servicing companies and any other service providers or representatives, and Highlands' owners, affiliates, and related entities, shall turn over all records related to Highlands to the Liquidator or his designees.

IT IS FURTHER ORDERED that Highlands, Highlands' agents, and those transacting Highlands' business must cooperate with the Liquidator or his designees as required by TEX. INS. CODE § 443.010(a).

IT IS FURTHER ORDERED that the United States Postmaster and any other delivery services shall deliver to the Liquidator any items addressed to or intended for Highlands.

V. STAY OF PROCEEDINGS

- 5.1 An automatic stay remains in effect with respect to actions against Highlands or its property pursuant to TEX. INS. CODE § 443.008(c). In accordance with TEX. INS. CODE § 443.008(f), such stay of actions against Highlands is in effect for the duration of this proceeding, and the stay of actions against Highlands' property is in effect for as long as the property belongs to the receivership estate.

VI. TERMINATION OF COVERAGE

- 6.1 In force reinsurance contracts by which Highlands assumed another insurer's insurance obligations are canceled upon the entry of this order under TEX. INS. CODE § 443.152(a).
- 6.2 Pursuant to TEX. INS. CODE § 443.152(b), any in force insurance policies, surety bonds or surety undertakings issued by Highlands continue in effect only until 30 days after the effective date of this order, unless otherwise terminated earlier.

VII. OTHER ORDERS

- 7.1 Pursuant to TEX. INS. CODE § 443.055, this Order constitutes a final judgment, provided that this Court shall retain jurisdiction to issue further orders pursuant to the *Insurer Receivership Act*. This Order shall continue in full force and effect until the entry of an order terminating liquidation under TEX. INS. CODE § 443.352. Pursuant to TEX. INS. CODE § 443.151(a), this proceeding is exempt from any dormancy requirements.
- 7.2 Claims against Highlands that have not been finally settled or determined in accordance with the *Agreed Permanent Injunction and Order Appointing Permanent Receiver*, the *Second Amended Plan of Rehabilitation*, or other order of this Court shall be handled pursuant to TEX. INS. CODE § 443.253 et seq.
- 7.3 In accordance with TEX. INS. CODE § 443.007(d), the Liquidator may provide notice of any application by first class mail, electronic mail, or facsimile transmission, at his discretion.
- 7.4 Anyone over the age of 18 who is not a party to nor interested in the outcome of this suit may serve all citations, writs, and notices in this cause.
- 7.5 The *Agreed Permanent Injunction and Order Appointing Permanent Receiver* entered on November 6, 2003 remains in effect until the effective date of this Order.
- 7.6 All of the foregoing is subject to further orders of this Court.

SIGNED at Austin, Travis County, Texas, on this 10/29/2021 day of _____, 2021.


DISTRICT JUDGE PRESIDING

PROPER NOTICE GIVEN.
NO OBJECTION FILED.
SUBMITTED

RECOMMENDED 
SIGNED ON 26 DAY OF Oct. 2021


TOM COLLINS, RECEIVERSHIP SPECIAL MASTER

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Associated Case Party: CRAIG KOENIG SPECIAL DEPUTY RECEIVER OF
HIGHLAND INSURANCE

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Brian ERiewe		briewe@riewelaw.com	10/29/2021 12:14:34 PM	SENT
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