

Cause No. D-1-GN-20-003004

<p>THE STATE OF TEXAS, <i>Plaintiff,</i></p> <p>v.</p> <p>HOUSTON GENERAL INSURANCE EXCHANGE and HOUSTON GENERAL INSURANCE MANAGEMENT COMPANY <i>Defendants.</i></p>	<p>§ § § § § § § § §</p>	<p>IN THE DISTRICT COURT</p> <p>TRAVIS COUNTY, TEXAS</p> <p>98TH JUDICIAL DISTRICT</p>
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**ORDER APPOINTING LIQUIDATOR
AND PERMANENT INJUNCTION**

On this day the Court heard the *Application for Order of Liquidation and Request for Expedited Hearing (Application)* filed by Risk & Regulatory Consulting, LLC, solely in its capacity as Special Deputy Receiver of Houston General Insurance Exchange (HGIE) and Houston General Insurance Management Company (HGIMC), Defendants. The *Application* requests an order placing Defendants into liquidation pursuant to Chapter 443, the *Insurer Receivership Act*, and appointing the Texas Commissioner of Insurance (Commissioner) as Liquidator of Defendants (Liquidator). The *Application* also requests a Permanent Injunction pursuant to TEX. INS. CODE §443.008, enjoining Defendants and their agents from conducting Defendants’ business, and enjoining other parties from taking any actions against Defendants or their property in violation of the *Insurer Receivership Act*. The Special Deputy Receiver appeared by and through counsel. Although duly and timely notified of the *Application*, no one else appeared on behalf of any other party in interest.

In accordance with the *Order of Reference to Master* (Master) entered on June 10, 2020 (*Order of Reference*), the *Application* was properly submitted to the Master appointed in this cause.

The Master has held a hearing by submission, considered evidence, and issued a report pursuant to Tex. R. Civ. P. 171, which is incorporated herein, finding and recommending as follows:

I. FINDINGS OF FACT

- 1.1 Further attempts to rehabilitate Defendants would be futile, and the continued operation of Defendants would be hazardous to policyholders, creditors, and the public, and would substantially increase the risk of loss to them.
- 1.2 HGIE 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 Defendants, or those in control of Defendants, have converted, wasted, concealed, dissipated or removed Defendants' property, and there has been embezzlement or diversion of the Defendants' property.
- 1.4 Defendants have failed to make Defendants' property and records available to the Commissioner for examination.
- 1.5 Persons who were responsible for operating Defendants lack the experience or ability to operate an insurer, and that control of Defendants should not be returned to such persons under TEX. INS. CODE § 443.104(c).
- 1.6 Notice of the hearing on the *Application* was given to all persons required to be on the Certificate of Service in accordance with TEX. INS. CODE § 443.007.

II. CONCLUSIONS OF LAW

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

It is therefore **ORDERED, ADJUDGED and DECREED** that:

- 2.1 This Court has jurisdiction over the parties and the subject matter of this action under TEX. INS. CODE § 443.005(c) and TEX. CONST. art. IV, §22.
- 2.2 Grounds exist to place Defendants into liquidation pursuant to TEX. INS. CODE § 443.057(2), because HGIE is insolvent as defined in TEX. INS. CODE §443.004(a)(13).
- 2.3 Grounds also exist to place Defendants into liquidation pursuant to TEX. INS. CODE § 443.057(5) because Defendants, their parent company, subsidiaries, or affiliates have converted, wasted, concealed or otherwise improperly disposed of, dissipated, used, released, transferred, sold, assigned, hypothecated, or removed the property of Defendants.
- 2.4 Grounds also exist to place Defendants into liquidation pursuant to TEX. INS. CODE §443.057(11) because control over Defendants' business is in a person or persons who are so lacking in insurance company managerial experience or capability as to be hazardous to policyholders, creditors, or the public.
- 2.5 Grounds also exist to place Defendants into Liquidation pursuant to TEX. INS. CODE § 443.057(13) because Defendants have failed promptly to make available for examination all of their property or records, after demand by the Commissioner.
- 2.6 In accordance with TEX. INS. CODE § 443.058, the Special Deputy Receiver is entitled to an order of liquidation and a Permanent Injunction, and the Commissioner must be appointed as Liquidator of Defendants pursuant to TEX. INS. CODE § 443.151.
- 2.7 The Liquidator shall be vested by operation of law with title to all of Defendants' 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 Defendants, 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 Defendants, whether asserted or not, including but not limited to accounts receivable, notes, premiums, subrogation, insurance and reinsurance proceeds, and all licenses held by Defendants (collectively, Defendants' Property). The Liquidator's title shall extend to Defendants' 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, attorney, accountant, affiliate, or other representative of Defendants.

- 2.8 Pursuant to TEX. INS. CODE § 443.151(a), the Liquidator shall be directed to take possession and control of Defendants' Property, wherever located.
- 2.9 The Liquidator may act as he deems necessary or appropriate to perform his duties pursuant to the *Insurer Receivership Act*. The Liquidator shall have all the powers of Defendants' directors, officers and managers, and the authority of such persons are suspended except as specifically permitted by the Liquidator or his designees.

- 2.10 Defendants and Defendants' agents shall be required to cooperate with the Liquidator and his designees pursuant to TEX. INS. CODE § 443.010.
- 2.11 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, and prevent irreparable injury, loss and damage to the general public and Defendants' creditors. A necessity exists to enjoin Defendants and Defendants' agents from conducting Defendants' business, except as specifically permitted by the Liquidator or his designees; to enjoin financial institutions or depositories from taking any actions in connection with Defendants' property, except as directed by the Liquidator or his designees; and to enjoin all claimants or creditors from asserting claims or causes of action against Defendants, except as permitted by the *Insurer Receivership Act*.
- 2.12 Pursuant to TEX. INS. CODE § 443.008(c), an automatic stay remains in effect with respect to actions against Defendants or their property, effective on the commencement of this proceeding. In accordance with TEX. INS. CODE § 443.008(f), such stay of actions against Defendants are in effect for the duration of this proceeding, and the stay of actions against Defendants' property is in effect for as long as the property belongs to the receivership estate.
- 2.13 Pursuant to TEX. INS. CODE § 443.151(a), this proceeding is exempt from any dormancy requirements.
- 2.14 TEX. INS. CODE § 443.001(b) provides that the *Insurer Receivership Act* may not be interpreted to limit the powers granted to the Commissioner under other provisions of law.

Accordingly, this Order shall not be construed as a limitation of the Commissioner's powers granted under such provisions.

III. APPOINTMENT OF LIQUIDATOR

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

- 3.1 The Liquidator has all powers and authority granted by the *Insurer Receivership Act*, and any 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), title to all of Defendants' Property, including but not limited to all the assets and rights described in this Order, is vested in the Liquidator. The Liquidator is authorized to take control and possession of Defendants' Property, wherever located, and remove all such property from Defendants' premises.
- 3.3 The Liquidator is authorized to conduct the Defendants' business, administer Defendants' operations, and enter into any contracts necessary to perform the Liquidator's duties, at his discretion, pursuant to TEX. INS. CODE § 443.154(a).
- 3.4 Pursuant to TEX. INS. CODE § 443.154, the Liquidator has all the powers of the Defendants' directors, officers, and managers, and the authority of such directors, officers, and managers is suspended, except as permitted by the Liquidator. The Liquidator is authorized to supervise, suspend, terminate, or dismiss any or all of the directors, officers, managers, employees, or agents of the Defendants, or retain such persons at his discretion, and compensate them as he deems necessary from the Defendants' funds.
- 3.5 The Liquidator has all of Defendants' rights as the customer of a financial institution. The

Liquidator is authorized to withdraw Defendants' Property from any banks, financial institutions and other depositories, agencies of any state or the federal government, and any other entities, or continue the operation of any accounts of Defendants, at his discretion. Such authority to continue the operation of accounts includes, but is not limited to, accounts from which payments of claims under policies of insurance were issued.

- 3.6 The Liquidator is entitled to possession of any records related to Defendants held by the Defendants' attorneys, accountants, managing general agents, third-party administrators, management companies, data processing companies, affiliates, 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 Pursuant to TEX. INS. CODE § 443.154, the Liquidator may enter into contracts as necessary to perform his duties, and may assume or reject any executory contract or unexpired lease to which Defendants are a party at his discretion pursuant to TEX. INS. CODE § 443.013.
- 3.9 The Liquidator is authorized to change the locks on any property owned, leased, or occupied by Defendants.
- 3.10 The Liquidator is authorized to exclude any person from any property owned, leased or occupied by Defendants, at his discretion.
- 3.11 The Liquidator is authorized to receive, collect, control, open and review all mail addressed to or intended for Defendants, or arriving at Defendants' address.
- 3.12 Defendants and Defendants' agents shall be required to cooperate with the Liquidator and his designees pursuant to TEX. INS. CODE §443.010.

- 3.13 TEX. INS. CODE § 443.154(a) authorizes the Liquidator to appoint a Special Deputy Receiver, and employ or contract with legal counsel and other personnel as he deems necessary pursuant to TEX. INS. CODE §443.154(a). The Special Deputy Receiver 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 any such Special Deputy Receiver or other persons as he deems necessary, and pay for such services from Defendants' funds.
- 3.14 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.
- 3.15 Any successor to the Commissioner shall be appointed as the Liquidator of Defendants. In the event a successor is appointed to be the Commissioner, 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.
- 3.16 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: Defendants and its agents, including but not limited to:

Defendants, their current and former officers, trustees and directors (including, but not limited to, John Charles Heller, Kelly Myers, Sandeep Sahota, Patrick Christopher Cremin, Jay Edward Johnson, Faith Louise Patrick Fisher, and Matthew Thomas Coyle); the owners and affiliates of Defendants (including, but not limited to, Houston General Group, Houston Management Consulting, Inc. and Houston General Voting Trust); the

companies who were transacting the insurance business of Houston General Insurance Exchange, including but not limited to Global Century Insurance Brokers and its sub-agents underwriters, managers, employees, agents, servants, representatives, attorneys, accountants, brokers, investment advisors, auditors, adjusters and other persons or entities acting in concert with or on behalf of any person or entity described above (including but not limited to, Barry Spencer; Carr Riggs & Ingram, LLC; Dean Allen Westpfahl; Martin & Company; Jasbir Singh Thandi; Kameljeet K. Thandi; Sandeep Sahota; Satnam Singh Khalsa; Avtar Singh; Leonard Crouse; Gunjan Aggarwal; Violet Yan; Anthony Stola; Bauknight, Pietras & Stormer, P. A.; Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C; Burnie Burner; and Jaspreet Singh Padda);

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 Defendants' property (including, but not limited to, Bridge Bank; Quantbridge Capital MM; Interactive Brokers Group, Inc.; Interactive Brokers Group, LLC; Stifel, Nicolaus & Company; and Randy Powers); 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 Defendants, or in possession of any of Defendants' 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 Defendants' business under any charter, certificate of authority, license, permit, power or privilege belonging to or issued to Defendants, or exercising any direction, control, or influence over Defendants' business, except through the authority of the Liquidator or his designee;
- 4.2 Transacting any business of Defendants, including writing any new or renewal insurance coverage, in any manner except through the authority of the Liquidator or his designee;

- 4.3 Wasting, disposing of, converting, dissipating, or concealing, in any manner, any of Defendants' 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 Defendants' places of business, any of Defendants' Property, or any other items purchased by Defendants, or any items into which such property has been transferred, deposited or placed, or any other items owned by Defendants, wherever located, except through the authority of the Liquidator or his designee;
- 4.5 Releasing, transferring, selling, assigning or asserting ownership of, in any manner, any claims, accounts receivable, or causes of action belonging to Defendants, whether asserted or not, except through the authority of the Liquidator or his designee;
- 4.6 Doing anything, directly or indirectly, to prevent the Liquidator or his designee from gaining access to, acquiring, examining, or investigating any of Defendants' Property or any other property, books, documents, records, or other materials concerning Defendants' 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 Defendants 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 Defendants,

Defendants' Property or any part thereof, or against the Liquidator, except as otherwise permitted by the *Insurer Receivership Act*.

EACH OF YOU ARE FURTHER SPECIFICALLY ORDERED to make available and disclose to the Liquidator or his designees the nature, amount, and location of Defendants' Property, and immediately surrender all such property to the Liquidator or his designees. Defendants' attorneys, accountants, affiliates, managing general agents, third-party administrators, management companies, data processing companies and any other service providers or representatives, including but not limited to Barry Spencer; Carr Riggs & Ingram, LLC; Dean Allen Westpfahl; Martin & Company; Bauknight, Pietras & Stormer, P. A.; Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C; shall turn over all records related to Defendants to the Liquidator or his designees.

IT IS FURTHER ORDERED that Defendants, Defendants' agents and those transacting insurance business of Defendants must cooperate with the Liquidator or his designee 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 Defendants.

V. STAY OF PROCEEDINGS

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

VI. CONTINUATION OF COVERAGE

- 6.1 All reinsurance contracts by which HGIE has assumed insurance obligations of another insurer are canceled upon entry of this order pursuant to TEX. INS. CODE §443.152(a).
- 6.2 Unless further extended by the Liquidator with the approval of this Court pursuant to TEX. INS. CODE §443.152(b), all policies, insurance contracts, surety bonds or surety undertakings issued by HGIE in effect at the time of issuance this order shall continue in force only until the earlier of:
- (a) the 30th day after the date of entry of this order;
 - (b) the date of expiration of the policy coverage; or
 - (c) the date the insured has replaced the insurance coverage or otherwise terminated the policy.

VII. OTHER ORDERS

- 7.1 This Order shall issue and become effective immediately, and shall continue in full force and effect until the entry of an order by this Court terminating liquidation entered under TEX. INS. CODE § 443.352.
- 7.2 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, and no other orders which become final for purposes of appeal in the receivership proceeding, will act to close this delinquency proceeding until the Court issues its order terminating liquidation referred to above.
- 7.3 The State of Texas and the Attorney General of Texas shall have a claim for reasonable attorneys' fees and court costs pursuant to TEX. CIV. PRAC. & REM. CODE § 66.003 and

TEX. GOV'T CODE § 402.006, and the amount and payment of such claim are subject to the provisions of TEX. INS. CODE Chapter 443.

- 7.4 In accordance with TEX. INS. CODE § 443.001(b), this Order does not limit the rights of the Commissioner or the Texas Department of Insurance to take any administrative action or issue any administrative order pursuant to the Texas Insurance Code.
- 7.5 In accordance with TEX. INS. CODE § 443.007(d), the Liquidator and Special Deputy Receiver may provide notice of any application by first class mail, electronic mail, or facsimile transmission, at his or its discretion.
- 7.6 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.
- 7.7 All of the foregoing is subject to further orders of this Court.

SIGNED at Austin, Travis County, Texas, on this the 11th day of August, 2020.


TIM SULAK, JUDGE PRESIDING

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