

THE STATE OF TEXAS,	§	IN THE DISTRICT COURT OF
Plaintiff	§	
	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
ACCC INSURANCE COMPANY	§	
Defendant	§	250 th 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. in its capacity as Special Deputy Receiver (SDR) of ACCC Insurance Company (ACCC). The Application requests an order placing ACCC into liquidation pursuant to Chapter 443, the *Insurer Receivership Act*, and appointing the Texas Commissioner of Insurance (Commissioner) as Liquidator of ACCC (Liquidator). The *Application* also requests a Permanent Injunction pursuant to TEX. INS. CODE § 443.008, enjoining ACCC and its agents from conducting ACCC's business, and enjoining other parties from taking any actions against ACCC or its property in violation of the *Insurer Receivership Act*.

In accordance with the *Order of Reference to Master* entered on November 16, 2020 (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, recommending that:

- a. ACCC should be declared insolvent;
- b. Further efforts to rehabilitate ACCC would be futile and would substantially increase the risk of loss to its policyholders, creditors and to the general public;
- c. Each of the grounds for the entry of an Order of Liquidation alleged in the Application justifies entry of this Order; and
- d. that the Application should be granted.

Having considered the pleadings, 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 On October 21, 2020, this Court issued its *Agreed Order Appointing Rehabilitator, Permanent Injunction and Notice of Automatic Stay*, placing ACCC into rehabilitation.
- 1.2 Further attempts to rehabilitate ACCC would be futile, and the continued operation of ACCC would be hazardous to policyholders, creditors, and the public, and would substantially increase the risk of loss to them.
- 1.3 ACCC 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.
- 1.4 ACCC is in such a position that further transaction of its business would be hazardous financially to policyholders, creditors, and the general public. Further efforts to rehabilitate ACCC would substantially increase the risk of loss to creditors, policyholders, and the general public. Grounds exist as set forth in the Application to place ACCC into liquidation.
- 1.5 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 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 ACCC into liquidation pursuant to TEX. INS. CODE § 443.057(2), because ACCC is insolvent as defined in TEX. INS. CODE § 443.004(a)(13).

- 2.3 Grounds exist to place ACCC into liquidation pursuant to TEX. INS. CODE § 443.057(8), as it would not be in the best interests of ACCC's policyholders, creditors, or the public to continue conducting its business, due to its deteriorating financial condition.
- 2.4 Grounds exist to place ACCC into liquidation pursuant to TEX. INS. CODE § 443.057(9) because it is in such a position that further transaction of its business would be hazardous financially to policyholders, creditors, and the general public.
- 2.5 In accordance with TEX. INS. CODE § 443.058, the SDR is entitled to an order of liquidation and a Permanent Injunction, and the Commissioner must be appointed as Liquidator of ACCC to TEX. INS. CODE § 443.151.
- 2.6 The Liquidator shall be vested by operation of law with title to all of ACCC's 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 (including, but not limited to, Amegy Bank of Texas premium escrow account ending in 8409 and Amegy Bank of Texas claims account ending in 0776), 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 ACCC, 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 ACCC, 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 ACCC's behalf by its agents, including but not limited to ACCC General Agency, Inc., and all licenses held by ACCC (collectively, ACCC's Property). The Liquidator's title shall extend to ACCC's 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 ACCC.

- 2.7 Pursuant to TEX. INS. CODE § 443.151(a), the Liquidator shall be directed to take possession and control of ACCC's Property, wherever located.
- 2.8 The Liquidator may act as the Liquidator deems necessary or appropriate to perform his duties pursuant to the *Insurer Receivership Act*. The Liquidator shall have all the powers of ACCC's directors, officers and managers, and the authority of such persons are suspended except as specifically permitted by the Liquidator or his designees.
- 2.9 ACCC's officers, owner, managers, employees, and agents shall be required to cooperate with the Liquidator and his designees pursuant to TEX. INS. CODE § 443.010.
- 2.10 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 ACCC's creditors. A necessity exists to enjoin ACCC's agents from conducting ACCC's business, except as specifically permitted by the Liquidator or his designees. Further, a necessity exists to enjoin financial institutions or depositories from taking any actions in connection with ACCC's 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 ACCC, except as permitted by the *Insurer Receivership Act*.

- 2.11 Pursuant to TEX. INS. CODE § 443.008(c), an automatic stay remains in effect with respect to actions against ACCC or its property, effective on the commencement of this proceeding. In accordance with TEX. INS. CODE § 443.008(f), the stay of actions against ACCC are in effect for the duration of this proceeding, and the stay of actions against ACCC's property is in effect for as long as the property belongs to the receivership estate.
- 2.12 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 ACCC, 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 ACCC's 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 ACCC's Property, wherever located, and remove all such property from ACCC's premises.
- 3.3 The Liquidator is authorized to conduct ACCC's business, administer ACCC's 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 ACCC's 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 ACCC, or retain such persons at his discretion, and compensate them as he deems necessary from the ACCC's funds.
- 3.5 The Liquidator has all of ACCC's rights as the customer of a financial institution. The Liquidator is authorized to withdraw ACCC's 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 ACCC, 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 ACCC held by the ACCC's attorneys, accountants, managing general agents, third-party administrators, management companies, data processing companies, software development, maintenance or servicing company (including but not limited to Isthmus, Inc.), 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 Pursuant to TEX. INS. CODE § 443.154, the Liquidator may enter into contracts as necessary to perform the Liquidator's duties, and may assume or reject any executory

contract or unexpired lease to which ACCC is 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 ACCC.
- 3.10 The Liquidator is authorized to exclude any person from any property owned, leased, or occupied by ACCC, at his discretion.
- 3.11 The Liquidator is authorized to receive, collect, control, open and review all mail addressed to or intended for ACCC, or arriving at ACCC's address.
- 3.12 The Liquidator is authorized to use ACCC's property to transfer to a solvent assuming insurer any or all of ACCC's policy obligations under TEX. INS. CODE §443.154(h) if the transfer can be arranged without prejudice to applicable priorities under TEX. INS. CODE § 443.301.
- 3.13 ACCC and ACCC's agents shall be required to cooperate with the Liquidator and his designees pursuant to TEX. INS. CODE § 443.010.
- 3.14 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 ACCC's funds.
- 3.15 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.
- 3.16 Any successor to the Commissioner shall be appointed as the Liquidator of ACCC. 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.

- 3.17 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: ACCC and its agents, including but not limited to:

ACCC, its current and former officers, directors, underwriters, managers and employees (including, but not limited Jack Henry Ikenaga Jr., Philip James Bither, Ross Edward Bennett, Jr., Frank M. Paris, Mike Cameron Weaver, Robert Mark Sumners, Michael Sear, and Jose Daniel Saenz); owners, affiliates and related entities (including ACCC Holding Corporation, ACCC Claims Service, Inc., Best Texas General Agency, Inc., Swift Premium Finance Company, Jack Henry Ikenaga, Jr., the Lutz Corporation, and Isthmus, Inc.); local recording agents, managing general agents (including ACCC General Agency, Inc. and Freedom National Insurance Services, Inc.), 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 ACCC's property (including, but not limited to, US Bank and Amegy Bank); 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 ACCC, or in possession of any of ACCC's 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 ACCC's business under any charter, certificate of authority, license, permit, power or privilege belonging to or issued to ACCC, or exercising any direction, control, or influence over ACCC's business, except through the authority of the Liquidator or his designee;
- 4.2 Transacting any business of ACCC, 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 ACCC's 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 ACCC's places of business, any of ACCC's Property, or any other items purchased by ACCC, or any items into which such property has been transferred, deposited or placed, or any other items owned by ACCC, 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 ACCC, 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 ACCC's Property or any other property, books, documents, records, or other materials concerning ACCC's 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 ACCC 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 as well as legal process served without permission of this Court, or obtaining any preference, judgment, attachment, garnishment, or other lien, or making any levy against ACCC, ACCC's 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 ACCC's Property, and immediately surrender all such property to the Liquidator or his designees. ACCC's 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 (including but not limited to Arnold & Taylor, PLLC and Winstead PC), and ACCC's owners, affiliates and related entities (including, without limitation, ACCC Holding Corporation, ACCC Claims Service, Inc., the Lutz Corporation, Best Texas General Agency, Inc., Swift Premium Finance Company, Isthmus, Inc. and Jack Henry Ikenaga, Jr.), shall turn over all records related to ACCC to the Liquidator or his designees.

IT IS FURTHER ORDERED that ACCC, ACCC's agents and those transacting insurance business of ACCC 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 ACCC.

V. STAY OF PROCEEDINGS

5.1 An automatic stay remains in effect with respect to actions against ACCC 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 ACCC is in effect for the duration of this proceeding, and the stay of actions against ACCC's 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 ACCC 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 ACCC in effect at the time of issuance this order shall continue in force only until the earlier of:

- a. January 29, 2021, at 11:59:59 p.m., the 30th day after the effective date of this order;
- b. the date of expiration of the policy coverage;
- c. the date the insured has replaced the insurance coverage or otherwise terminated the policy; or
- d. The effective date of a transfer of a policy to an assuming insurer.

VII. EFFECTIVE DATE OF ORDER

7.1 This Order shall become effective at 12:01 a.m., December 30, 2020. The *Agreed Order Appointing Rehabilitator, Permanent Injunction and Notice of Automatic Stay* shall remain in full force and effect until 12:01 a.m., December 30, 2020.

VIII. OTHER ORDERS

- 8.1 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 by this Court terminating liquidation entered under TEX. INS. CODE § 443.352. Pursuant to TEX. INS. CODE § 443.151(a), this proceeding is exempt from any dormancy requirements.
- 8.2 The State of Texas and the Attorney General of Texas shall have a claim for reasonable attorneys' fees and court costs pursuant to 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.
- 8.3 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.
- 8.4 In accordance with TEX. INS. CODE § 443.007(d), the Liquidator and SDR may provide notice of any application by first class mail, electronic mail, or facsimile transmission, at his or its discretion.
- 8.5 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.
- 8.6 All of the foregoing is subject to further orders of this Court.

SIGNED at Austin, Travis County, Texas, on this the 14th day of December, 2020.

PROPER NOTICE GIVEN.
NO OBJECTION FILED.
SUBMITTED
RECOMMENDED *th*
SIGNED ON 11 DAY OF Dec. 2020
Tom Collins

TOM COLLINS, RECEIVERSHIP SPECIAL MASTER

Tim Sulak

DISTRICT JUDGE PRESIDING
TIM SULAK