

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

PEOPLE OF THE STATE OF ILLINOIS, *ex rel.*,)
ANNE MELISSA DOWLING, ACTING DIRECTOR)
OF INSURANCE OF THE STATE OF ILLINOIS,)

Plaintiffs,)

v.)

AFFIRMATIVE INSURANCE COMPANY)
an Illinois domestic property and casualty stock)
company,)

Defendant.)

NO. 15 CH 13718

**ORDER OF LIQUIDATION
WITH FINDING OF INSOLVENCY**

THIS CAUSE COMING TO BE HEARD upon the Verified Complaint for Liquidation With a Finding of Insolvency filed herein by THE PEOPLE OF THE STATE OF ILLINOIS, upon the relation of ANNE MELISSA DOWLING, Acting Director of Insurance of the State of Illinois (the “Director), seeking an Order of Liquidation with a Finding of Insolvency as to and against Affirmative Insurance Company (“Affirmative”) pursuant to the provisions of Article XIII, 215 ILCS 5/187 *et seq.*, of the Illinois Insurance Code (the “Code”), 215 ILCS 5/1 *et seq.*; the Court having jurisdiction over the parties hereto and the subject matter hereof; the Court having reviewed the pleadings filed herein and having considered arguments of counsel thereon, and the Court then being otherwise advised in the premises, and for good cause appearing therefore;

THE COURT FINDS:

1. Sufficient cause exists for the entry of an order for liquidation of the Defendant, Affirmative, including the fact that Affirmative is insolvent; 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 Affirmative; and
3. There being no just reason for delaying enforcement or appeal of this Order, this Order is a final order within the meaning of Illinois Supreme Court Rule 307(a)(5); and
4. With the entry of this Order, the 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 Affirmative; 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 Affirmative; 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 Affirmative to her possession and control or to such other place as may be convenient for purposes of the efficient and orderly administration of Affirmative'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 Affirmative in her name as Director or, if the Court shall so order, in the name of Affirmative; 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 Affirmative, or any part thereof, and to sell or compromise all debts or claims owing to Affirmative having a value in the amount of Twenty-Five Thousand Dollars (\$25,000.00), or less. Any such sale by the Liquidator of the real or personal property of Affirmative having a value in excess of Twenty-Five Thousand Dollars (\$25,000.00), and sale or compromise of debts owing to Affirmative by the Liquidator where the debt owing to Affirmative exceeds Twenty-Five Thousand Dollars (\$25,000.00) 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 Affirmative including, but not limited to, prosecuting any action, claim, suit, or proceeding on behalf of the policyholders, beneficiaries or creditors of Affirmative; 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 Affirmative owing to former policyholders and creditors; and
- h. Pursuant to Section 194(a) of the Code, 215 ILCS 5/194(a), the rights and liabilities of Affirmative, and of its policyholders, creditors, and all other persons interested in Affirmative's assets, are fixed as of the date of the entry of the order of liquidation prayed for herein, unless otherwise provided by order of the Court; 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 the Court, from the assets of Affirmative, all administrative expenses incurred during the course of the liquidation of Affirmative; 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 the property of Affirmative 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 Affirmative, 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.

IT IS HEREBY ORDERED THAT:

A. Anne Melissa Dowling, Acting Director of Insurance of the State of Illinois, and her successors in office, are affirmed as the statutory Liquidator (the "Liquidator") of Affirmative, with all of the powers appurtenant thereto.

B. Subject to the further orders of this Court, the Liquidator is authorized to take such actions as the nature of the cause and the interests of Affirmative, 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 Affirmative, and of the premises occupied by Affirmative for the transaction of its business, and to take such action as the nature of this cause and the interests of Affirmative's policyholders, beneficiaries, creditors or the public may require, pursuant to the provisions of Article XIII of the Code, *supra*; and to liquidate, wind down and terminate Affirmative's business and affairs, and to make the continued expenditure of such wages, rents and expenses as she may deem necessary and proper for the administration of the liquidation of Affirmative; and

ii. The Liquidator is authorized to sue, defend, and settle claims on behalf of Affirmative, or for the benefit of Affirmative's policyholders, beneficiaries and creditors, in the courts either in her name as the Liquidator of Affirmative, or in the name of Affirmative.

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

**"IN THE MATTER OF THE LIQUIDATION OF
AFFIRMATIVE INSURANCE COMPANY"**

D. All costs of these proceedings shall be taxed and assessed against the Defendant, Affirmative.

E. Pursuant to its authority under Section 189 of the Code, 215 ILCS 5/189, the Court hereby 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 Affirmative 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 Affirmative having knowledge of this are ordered to deliver to the Liquidator, at her request, copies of all documents in their possession or under their control concerning or related to Affirmative, and to provide the Liquidator with such information as she may require concerning any and all business and/or professional relationships between them and Affirmative, and concerning any and all activities, projects, jobs and the like undertaken and/or performed by them at the request of Affirmative, or its agents, servants, officers, trustees, directors, third party administrators and/or employees, or which Affirmative may be, or is, entitled to as the result of its relationship with such accountants, auditors, actuaries, and attorneys; and
- b. Affirmative and its directors, trustees, officers, agents, third party administrators, servants, representatives and employees, and all other

persons and entities having knowledge of this order are ordered to give immediate possession and control to the Liquidator, at her request, of all property, business, books, records and accounts of Affirmative, and all premises occupied by Affirmative 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 this are ordered to immediately deliver any and all such assets and/or records to the Liquidator; and
- ii. Affirmative and its directors, trustees, officers, agents, third party administrators, servants, representatives and employees, and all other persons and entities having knowledge of this order are enjoined and restrained from transacting any business of Affirmative, or disposing of any of Affirmative's 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 Affirmative, until the further order of the Court; and
- iii. The directors, trustees, officers, agents, third party administrators, servants, representatives and employees of Affirmative, and all other persons and entities, including Affirmative's policyholders and creditors, having knowledge of this order are 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 Affirmative, 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 these liquidation proceedings; and 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 Affirmative, or its property or assets while in the possession and control of the Liquidator; and from interfering in any way with the Liquidator in her possession or control of the property, business, books, records, accounts, premises and all other assets of Affirmative, 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 this order, and having in its possession accounts and any other assets which are, or may be, the property of Affirmative, are enjoined and restrained from disbursing or disposing of said accounts and assets and are further enjoined and restrained from disposing of or destroying any records pertaining to any business transaction between Affirmative and such banks, brokerage houses, financial institutions, companies, persons or entities having done business, or doing business, with Affirmative, or having in its possession assets which are, or may be, the property of Affirmative; and

v. All agents, brokers and producers of Affirmative, and their respective agents, servants, representatives and employees, and all other persons or entities having knowledge of this order are enjoined and restrained from returning any unearned premiums or any money in their possession, or under their control, collected from premiums, contributions or assessments upon policies, contracts or certificates of insurance or reinsurance previously issued by Affirmative, to policyholders, beneficiaries, certificate holders or others, and all said agents, brokers and producers and their respective agents, servants, representatives and employees are

directed to 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

- vi. 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 Affirmative, and all insurance and reinsurance companies and entities that assumed liabilities from Affirmative arising under either contracts, policies, certificates, treaties or agreements of insurance or reinsurance issued by Affirmative, are enjoined and restrained from making any settlements with any claimant or policyholder of Affirmative, or any other person other than the Liquidator, except with the written consent of the Liquidator, or when the insurance or reinsurance contract, policy, certificate, treaty or agreement lawfully provides for payment to or on the behalf of Affirmative's insured by the assuming reinsurer.

F. All direct policies and/or certificates of insurance, and bonds heretofore issued by Affirmative are hereby canceled upon the following terms:

- i. All direct policies and/or certificates of insurance, and bonds 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, policyholder, or principal

of any such direct policy and/or certificate of insurance, or bond on the thirty-first (31st) day following the effective date of this order of liquidation; or

b. Upon the expiration date of any such direct policy and/or certificate of insurance, or bond if the expiration date is less than thirty-one (31) days after the effective date of this order of liquidation; or

c. Upon the date the insured, policyholder, or principal of any such direct policy and/or certificate of insurance, or bond replaces the direct policy and/or certificate of insurance, or bond or upon the date the policyholder, insured, or principal on request effects cancellation, if the insured, policyholder, or principal does so prior to the thirty-first (31st) day following the effective date of this order of liquidation, whichever is earlier;

ii. All other direct policies and/or certificates of insurance, and bonds heretofore issued by Affirmative are canceled effective upon the entry of this order of liquidation.

G. All contracts, treaties and agreements of reinsurance wherein Affirmative was, or is, the assuming or retrocessional reinsurer are cancelled on a "cut-off" basis; and all other treaties, contracts and agreements of reinsurance, wherein Affirmative is the ceding company, shall remain in full force and effect pending a determination and recommendation by the Director as to when, and upon what terms, cancellation is appropriate; and

H. The Court's September 16, 2015, Order of Rehabilitation, entered as to and against Affirmative is vacated, and the rehabilitation proceedings arising therefrom, are hereby terminated.

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

ENTERED:


Presiding Judge

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Judge Anna Helen Demacopoulos

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Circuit Court - 2002

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