

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

GEORGE FABE
Superintendent of Insurance
State of Ohio
2100 Stella Court
Columbus, Ohio 43215

Plaintiff,

vs.

THE AMERICAN DRUGGISTS'
INSURANCE COMPANY
11300 Cornell Park Drive
Blue Ash, Ohio 45241

Defendant.

Case No. 86CV-03-1381

JUDGE WEST

FILED
COMMON PLEAS
FRANKLIN COUNTY
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ORDER OF LIQUIDATION AND INJUNCTION

This matter came on before the Court upon Plaintiff's Motion for Order of Liquidation, without a hearing by agreement of the parties. Plaintiff appeared by and through Special Counsel appointed by the Attorney General of Ohio, Anthony J. Celebrezze, Jr. Defendant, The American Druggists' Insurance Company (hereinafter "ADI"), through its Board of Directors and counsel, have consented to the Entry of this Order of Liquidation and have waived notice of a formal hearing to show cause in connection with the establishment of such liquidation.

After having heard and considered the facts set forth in Plaintiff's Motion, this Court finds that the law and facts are as Plaintiff has alleged and that there exists a present and urgent necessity for the immediate entry of this Order. This Court further finds that:

1. ADI was incorporated under the State of Ohio as a stock fire insurance company in February, 1906 and is a domestic insurer as defined by R.C. Chapter 3903.

2. Further attempts to rehabilitate Defendant ADI would substantially increase the risk of loss to creditors, policyholders or the public, or would be futile.

3. Defendant ADI is insolvent as defined in R.C. 3903.01(K).

4. Defendant ADI is in such condition that the further transaction of business would be hazardous, financially or otherwise, to its policyholders, its creditors or the public.

5. Defendant ADI is an insolvent insurer as that term is defined in R.C. 3955.01(C).

6. Defendant ADI, its members, officers, directors, agents, employees, partners, representatives and those acting in concert with it should be enjoined and restrained from conducting, operating or engaging in the business of insurance or any other business of Defendant ADI under any charter, permit, license, registration, certificate of authority, power or privilege of Defendant ADI, and that all banks, savings and loan associations, corporations, depositors, employers' welfare trusts, unions, agents or other legal entities should be enjoined and restrained from removing or disposing of any of the assets, books, records or property of Defendant ADI, or of any debt or claim owed to, by or for said Defendant, without the express written authorization of the Liquidator.

7. Without the appointment of a Liquidator, Defendant ADI is not in a condition to continue its insurance business and may cause harm to the interests of its policyholders, creditors or the public in general, and that unless restrained, Defendant ADI will be forced to operate in a condition contrary to the best interests of Defendant ADI's creditors, policyholders and the general public.

8. Without the appointment of a Liquidator, the assets of Defendant ADI may become dissipated, causing irreparable and immediate injury of the policyholders, Defendant ADI's creditors and the general public.

NOW, THEREFORE, it is ORDERED and ADJUDGED that:

1. Sufficient cause exists for the Liquidation of Defendant ADI and the Plaintiff's Motion for an Order of Liquidation be and hereby is granted.

2. George Fabe, Superintendent of Insurance for the State of Ohio, and his successors in office, be and hereby is appointed Liquidator of Defendant ADI for the purpose of

liquidation of Defendant ADI pursuant to the provisions of R.C. Chapter 3903.

3. The Liquidator shall forthwith take possession of all assets and property of Defendant ADI, of every kind whatsoever and wherever located whether in the possession of Defendant ADI or its officers, directors, employees, consultants, attorneys, agents, parents, subsidiary or affiliated corporations or those acting in concert with any of these persons, including, but not limited to, all property, offices maintained by ADI, contracts, deposits, securities, rights of action, accounts, documents, papers, evidences of debt, bonds, debentures, mortgages, furniture, fixtures, office supplies, safe deposit boxes and books and records of Defendant ADI, wherever located, and administer them under the general supervision of this Court.

4. The Liquidator shall and is hereby vested by operation of law with the title to all property, deposits, securities, contracts, rights of action, accounts, documents, papers, evidences of debt, bonds, debentures, mortgages, furniture, fixtures, office supplies, books, records and other assets of Defendant ADI wherever located as of the date of the entry of this Order of Liquidation and is authorized to deal with same in his own name as Liquidator.

5. The Liquidator is directed to liquidate the assets of the Company, including, but not limited to, funds held by the Company's agents, subagents, producing agents, brokers, reinsurers and reinsurance pools, solicitors, reinsurers and reinsurance pools service representatives, or others under agency contracts or otherwise, which are due and unpaid to Defendant ADI, including premium, unearned commissions, agents' balances and agents' reserve funds.

6. The Liquidator is vested with the right, title and interest in all funds recoverable under treaties, contracts and agreements of reinsurance heretofore entered into by Defendant ADI as the ceding insurer, and that all reinsurance companies involved with Defendant ADI are restrained from making any settlements with any claimant or policyholder other than the

Superintendent as Liquidator, without the written permission or consent of the Liquidator.

7. The Liquidator is authorized to take such action as he considers necessary or appropriate to liquidate Defendant ADI, including, but not limited to, the following:

(a) Appoint one or more special deputies to act for him under Sections 3903.01 to 3903.59 of the Revised Code, and determine the deputies' reasonable compensation. Special deputies have all the powers of the Liquidator and shall serve at the pleasure of the Liquidator;

(b) Employ employees and agents, actuaries, accountants, appraisers, consultants, and such other personnel as he may consider necessary to assist in the liquidation;

(c) Fix the reasonable compensation of employees and agents, actuaries, accountants, appraisers and consultants with the approval of the Court;

(d) Pay reasonable compensation to persons appointed and defray from the funds or assets of Defendant ADI all expenses of taking possession of, conserving, conducting, liquidating, disposing of or otherwise dealing with the business and property of the insurer. In the event that the property of the insurer does not contain sufficient cash or liquid assets to defray the costs incurred, the Superintendent of Insurance may advance the costs so incurred out of any appropriation for the maintenance of the Department of Insurance. Any amounts so advanced for expenses of administration shall be repaid to the Superintendent for the use of the Department out of the first available money of Defendant ADI;

(e) Hold hearings, subpoena witnesses to compel their appearance, administer oaths, examine any person under oath and compel any person to subscribe to his testimony after it has been correctly reduced to writing, and in connection therewith require the production of any books, papers, records or other documents which he considers relevant to the inquiry;

(f) Collect all debts and moneys due and claims belonging to the insurer, wherever located. For this purpose, the Liquidator may do any of the following:

(i) Institute timely actions in other jurisdictions, in order to forestall garnishment and attachment proceedings against such debts;

(ii) Do such other acts as are necessary or expedient to collect, conserve or protect its assets or property, including the power to sell, compound, compromise or assign debts for purposes of collection upon such terms and conditions as he considers best;

(iii) Pursue any creditor's remedies available to enforce his claims;

(g) Conduct public or private sales of the property of Defendant ADI;

(h) Use assets of the estate of Defendant ADI to transfer policy obligations to a solvent assuming insurer, if the transfer can be arranged without prejudice to applicable priorities under R.C. 3903.42;

(i) Acquire, hypothecate, encumber, lease, improve, sell, transfer, abandon or otherwise dispose of or deal with, any property of Defendant ADI at its market value or upon such terms and conditions as are fair and reasonable. The Liquidator may execute, acknowledge and deliver any and all deeds, assignments, releases and other instruments necessary or proper to effectuate any sale of property or other transaction in connection with the liquidation;

(j) Borrow money on the security of Defendant ADI's assets or without security and to execute and deliver all documents necessary to that transaction for the purpose of facilitating the liquidation;

(k) Enter into such contracts as are necessary to carry out this Order to Liquidate, and to affirm or disavow any contract to which Defendant ADI is a party;

(l) Continue to prosecute and to commence in the name of Defendant ADI or in his own name any and all suits and

other legal proceedings, in this state or elsewhere, and to abandon the prosecution of claims he considers unprofitable to pursue further; if Defendant ADI is dissolved under R.C. 3903.20, to apply to any court in this state or elsewhere for leave to substitute himself for Defendant ADI as plaintiff;

(m) Prosecute any action which may exist on behalf of the creditors, members, policyholders or shareholders of Defendant ADI against any officer of Defendant ADI or any other person;

(n) Remove any or all records and property of Defendant ADI to the offices of the Superintendent or to such other place as may be convenient for the purposes of efficient and orderly execution of the liquidation. Guaranty associations and foreign guaranty associations shall have such reasonable access to the records of Defendant ADI as is necessary for them to carry out their statutory obligations;

(o) Deposit in one or more banks in this state such sums as are required for meeting current administration expenses and dividend distributions;

(p) Invest all sums not currently needed, unless the Court orders otherwise;

(q) File any necessary documents for record in the office of any recorder of deeds or record office in this state or elsewhere where property of Defendant ADI is located;

(r) Assert all defenses available to Defendant ADI as against third persons, including, but not limited to, statutes of limitation, statutes of frauds, and the defense of usury. A waiver of any defense by Defendant ADI after a complaint in liquidation has been filed does not bind the Liquidator. Whenever a guaranty association or foreign guaranty association has an obligation to defend any suit, the Liquidator shall give precedence to such obligation and may defend only in the absence of a defense by such guaranty association;

(s) Exercise and enforce all the rights, remedies and powers of any creditor, shareholder, policyholder or member, including any power to avoid any transfer or lien that may be

given by the general law and that is not included under R.C. 3903.26 to R.C. 3903.28;

(t) Intervene in any proceeding wherever instituted that might lead to the appointment of a receiver, conservator, rehabilitator, liquidator, or trustee, and to act as the receiver, conservator, rehabilitator, or trustee whenever the appointment is offered;

(u) Enter into agreements with any receiver, conservator, rehabilitator, liquidator, or superintendent of any other state relating to the rehabilitation, liquidation, conservation or dissolution of an insurer doing business in both states;

(v) Exercise all powers now held or hereafter conferred upon receivers, conservators, rehabilitators, or liquidators by the laws of this state not inconsistent with the provisions of R.C. 3903.01 to R.C. 3903.59;

(w) Take possession of all of the Company's securities and deposits filed or on deposit with Plaintiff;

(x) Collect all debts and money due and claims belonging to Defendant ADI, wherever located, which are economically feasible to collect;

(y) The enumeration of the above described powers and authority of the Liquidator shall not be construed as a limitation upon him, nor shall it exclude in any manner his right to do such other acts not herein specifically enumerated, or otherwise provided for, as may be necessary or appropriate for the accomplishment of or in aid of the purpose of liquidation.

8. The Liquidator is hereby granted and given all powers and authority under any and all statutes and under the common laws of this state authorizing the appointment of Insurance Liquidators, and, particularly, be and hereby is granted and given all powers and authority contained in R.C. Chapter 3903, including, without limitation, those enumerated herein.

9. All officers, directors, trustees, employees or agents of Defendant ADI, or any other person, firm, association,

partnership, corporation or other entity in charge of any aspect of Defendant ADI's affairs, including, but not limited to, banks, savings and loan associations, financial or lending institutions, brokers, stock or mutual associations, or any parent, holding company, subsidiary or affiliated corporation or any other representative acting in concert with Defendant ADI, shall cooperate with the Liquidator in the performance of his duties. The directive of "to cooperate" shall include, but not be limited to, a duty to do both of the following as required by law:

(a) Reply promptly in writing to any inquiry from the Liquidator requesting such a reply; and

(b) Make available to the Liquidator any books, accounts, documents, records, information or property of, or pertaining to, Defendant ADI in his possession, custody or control.

10. No member, officer, director, employee, consultant, attorney, parent, subsidiary or affiliated corporation, partner, agent, representative of Defendant ADI, or any other person acting in concert with Defendant ADI, shall obstruct or interfere with the Liquidator in the conduct of his duties as Liquidator, and these persons are hereby restrained, except under the express authorization of the Liquidator or by the further order of this Court, from doing, operating and conducting the business of insurance of Defendant ADI under any charter, permit, license, power or privilege, belonging to or heretofore issued by or to said Defendant ADI, and from in any manner conducting, doing or engaging in the business of insurance on behalf of Defendant ADI; ~~from dealing with or permitting to be done any~~ action which might waste or dispose of the property or assets of ADI; from disposing of, using, transferring, selling, assigning, cancelling, hypothecating or concealing in any manner or in any way, any books, records, equipment, money, accounts receivable, stocks, bonds, assets, notes, funds or any other property or other assets of Defendant ADI, whether real, personal or mixed or of any kind or nature, wherever situated, including any claims or causes of action that Defendant ADI might have against any

person, firm, association or corporation, belonging to, owned by, in the possession of, or claimed by Defendant ADI; and disposing of any account, debt, deposit, share account, trust account, or any other asset owned, owed to, or held for the benefit of Defendant ADI, or any account held individually, jointly, or severally for Defendant ADI, whether such account, debt, deposit, share account, trust account, or any other asset is owned or held for such Defendant in the name of or for the benefit of Defendant ADI or under any other name.

11. All officers, directors, employees, agents, servants, representatives of Defendant ADI and those acting in concert with Defendant ADI, shall, by sworn written statement, upon the request of the Liquidator, inform the Liquidator of the nature, description and location of all assets or other property of Defendant ADI not located on the premises of Defendant ADI, including, but not limited to, all bank accounts, safe deposit boxes, safes, stock certificates, bonds, certificates of deposit, cash, security or any other property, real, personal or mixed, and these persons are specifically ordered and enjoined from disposing of, using or concealing in any manner or in any way any of the assets, books, property, records or reports of Defendant ADI, except under the express authorization of the Liquidator or by the further Order of this Court.

12. All banks, savings and loan associations, trust companies or any other persons, firms, corporations, associations, depositories, employers, unions, brokerage houses, welfare trusts, or other legal entities, are hereby restrained as follows:

(a) From disposing of, using, releasing, transferring, withdrawing, allowing to be withdrawn or concealing in any manner or in any way any of the property or assets of Defendant ADI, of any kind or nature whatsoever, wherever situated, or from disposing of any account, debt, deposit, share account, trust account, or any other asset owned, owed to or held for the benefit of Defendant ADI, or any account, debt, share account, trust account, or other assets owned or held individually,

jointly, or severally, for Defendant ADI, whether such account, debt, deposit, share account, trust account, or any other asset is owned or held for such Defendant in the name of or for the benefit of said Defendant, or under any other name, except under the express written authorization of the Liquidator or by the further order of this Court.

(b) From doing anything, directly or indirectly, to prevent the Liquidator from gaining access to, acquiring, examining or investigating any books, documents or records pertaining to or concerning Defendant ADI or its affairs, under whatever name such books, documents or records may be filed or found or wheresoever such books, documents or records may be found or situated.

(c) From interfering in any way with the lawful acts of the Liquidator who has been appointed herein or from disposing of, converting, dissipating, or concealing in any manner or in any way any of the assets, books, property, records, or reports of Defendant ADI.

13. The Liquidator shall take all steps necessary to place all bank accounts, stock certificates, securities, certificates of deposit and other financial instruments of Defendant ADI into his own name, and shall use any accounts of Defendant ADI as an operating fund for the liquidation of Defendant ADI, and shall keep a true and correct account of any and all receipts or expenditures which he shall make as Liquidator in the course of the liquidation of said business.

14. All agents, brokers, premium finance companies, or any other persons responsible for the payment of a premium and unearned commission, as shown on the records of Defendant ADI, shall pay to the Liquidator any unpaid earned premium or unearned commission due Defendant ADI at the time of the entry of this Order. All insureds of Defendant ADI shall pay to the Liquidator any unpaid earned premium due Defendant ADI, as show on the records of Defendant ADI, at the time of the entry of this Order.

15. All agents and brokers of Defendant ADI are enjoined from returning any unearned premiums, or any money in

their possession collected for premiums or enrollment contributions to policyholders or subscribers and all premium finance companies which have entered into contracts to finance a premium for a policy which has been issued by Defendant ADI are enjoined from returning any such premiums or any money in their possession and that such agents, brokers and premium finance companies shall turn over all such funds in their possession to the Superintendent as Liquidator.

16. Defendant ADI, and its respective officers, directors, agents and employees and all other persons are enjoined from bringing or further prosecuting any action or claim for relief, counterclaim, set-off, cross-claim, third party complaint, or otherwise, at law or in equity or other proceeding against Defendant ADI or the Liquidator, or from in any way interfering with the Liquidator's conduct of the business of Defendant ADI, or from obtaining preferences, judgments, attachments, or other like liens or the making of any levy against Defendant ADI or its property and assets while in possession and control of the Liquidator, or from in any way interfering with the Liquidator in his possession or control of or in his right, title and interest to the property, books, records and all other assets of Defendant ADI.

17. No civil action shall be commenced against Defendant ADI or Liquidator, whether in this state or elsewhere, nor shall any such existing actions be maintained or further prosecuted after the entry of this Order. Whenever in the Liquidator's judgment, protection of the estate of Defendant ADI necessitates intervention in an action against Defendant ADI that is pending outside this state, he may intervene in the action. The Liquidator may defend any action in which he intervenes under this section at the expense of the estate of Defendant ADI.

18. The Liquidator is authorized to, upon or after this Order for Liquidation, within two years or such time in addition to two years as applicable law may permit, commence an action or proceeding on behalf of the estate of Defendant ADI upon any cause of action against which the period of limitation

fixed by applicable law has not expired at the time of the filing of Plaintiff's Motion for an Order of Liquidation. Where, by any agreement, a period of limitation is fixed for commencing a suit or proceeding upon any claim, or for filing any claim, proof of claim, proof of loss, demand, notice or the like, or where in any proceeding, judicial or otherwise, a period of limitation is fixed, either in the proceeding or by applicable law, for taking any action, filing any claim or pleading, or doing any act, and where in any such case the period had not expired at the date of the filing of the Motion for an Order of Liquidation, the Liquidator may, for the benefit of Defendant ADI, take any such action or do any such act, required of or permitted to Defendant ADI, within a period of one hundred eighty days subsequent to the entry of this Order for liquidation, or within such further period as is shown to the satisfaction of the Court not to be unfairly prejudicial to the other party.

19. Any guaranty association or foreign guaranty association shall have standing to appear in any court proceeding concerning the liquidation of Defendant ADI if such association is or may become liable to act as a result of the liquidation.

20. All persons, including policyholders, insureds, obligees, principals, creditors, stockholders of Defendant ADI and all persons asserting claims against such policyholders, are enjoined from instituting or pursuing any action or proceeding in any court or before any administrative agency, including boards and commissions administering workmens' compensation or occupational diseases or similar laws of the State of Ohio or of any other states, or of the United States, which seeks in any way, directly or indirectly, to contest or interfere with the Superintendents' exclusive right, title and interest to funds recoverable under treaties and agreements of reinsurance heretofore entered into by Defendant ADI as the ceding insurer.

21. All insurance policies, bonds, and other similar obligations or contracts of Defendant ADI now in force shall stand cancelled as of the 30th day after the date of the Entry of this Order of Liquidation, except that those policies, surety

bonds or other similar obligations or contracts with normal expiration dates prior thereto and policies terminated by insureds or lawfully cancelled by Defendant ADI before such date, shall stand cancelled as of such earlier date.

22. The Liquidator is authorized to cancel all executory contracts, except the contracts of insurance, surety bonds and other similar obligations and contracts which are cancellable as provided in paragraph 21 herein, that all liability thereunder shall cease and be fixed as of the date of the Entry of this Order of Liquidation, except as provided in R.C. 3903.19 and 3903.37, and that such impending cancellations not be treated as anticipatory or other breach of contracts.

23. The Liquidator shall have the power and authority under R.C. 3903.26, 3903.27 and 3903.28 to avoid fraudulent or preferential transfers.

24. The Liquidator is hereby authorized to do all other things permitted by law to effectuate the Liquidation of Defendant ADI.

25. All third persons dealing with interests in real property or other property of Defendant ADI are charged with notice of this Order as provided in R.C. 3903.18(A).

26. The Liquidator is directed to give or cause to be given notice of this Liquidation Order as required by R.C. 3903.22.

27. As soon as practical after the Entry of this Order, but not later than one hundred twenty days thereafter, the Liquidator shall prepare in duplicate a list of inventory of all property of Defendant ADI or submit to the Court a plan for disbursement of assets in accordance with R.C. 3903.34. and shall submit an accounting to this Court at such intervals as ordered by this Court.

28. Upon the issuance of this Order, the rights and liabilities of Defendant ADI and of its creditors, policyholders, shareholders, members and all other parties interested in the estate of Defendant ADI shall become fixed as of the date of this Order, except as provided in R.C. 3903.19 and R.C. 3903.37.

29. Upon the Motion of Plaintiff requesting that Richard A. Gregg be appointed as Chief Deputy Rehabilitator and Stafford P. McGuire and James M. Young be appointed as Deputy Rehabilitators, the same are hereby appointed until such further Order of this Court.

30. George Fabe, the Superintendent of Insurance, State of Ohio, or any successor in office as Superintendent, is hereby authorized, permitted and allowed to sell, assign and transfer the Corporate Charter of Defendant ADI and any and all insurance licenses or certificates of authority to write insurance in such a method and manner as may be approved by this Court.

31. This Court requests that, in all actions or proceedings pending or hereafter filed outside of the State of Ohio involving Defendant ADI, full faith and credit be given to this Order.

32. This Court shall retain jurisdiction in this case for the purpose of granting such other and further relief as the nature of this case or on the interests of the policyholders, creditors, stockholders or the members of the public may require.

S. West
JUDGE

THE STATE OF OHIO Franklin County, ss	THOMAS J. ENRIGHT, Clerk OF THE COURT OF COMMON PLEAS, WITHIN AND FOR SAID COUNTY.
HEREBY CERTIFY THAT THE ABOVE AND FOREGOING IS TRULY TAKEN AND COPIED FROM THE ORIGINAL <i>Order of Rehabilitation</i> NOW ON FILE IN MY OFFICE <i>Franklin County</i>	
<i>By</i>	WITNESS MY HAND AND SEAL OF SAID COURT THIS _____ DAY
	A.D. 19 <i>26</i>
	THOMAS J. ENRIGHT, Clerk
By <i>L. Clayton</i>	Civil Deputy