

**IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO
CIVIL DIVISION**

J. LEE COVINGTON, II,
SUPERINTENDENT OF INSURANCE
OHIO DEPARTMENT OF INSURANCE

Plaintiff,

vs.

LMI INSURANCE COMPANY

Defendant.

CASE NO. 00 CVH03-2431

JUDGE Johnson

FILED
 COURT OF COMMON PLEAS
 FRANKLIN COUNTY, OHIO
 2001 MAY 23 AM 11:13
 CLERK OF COURT

FINAL ORDER OF LIQUIDATION AND APPOINTMENT OF LIQUIDATOR

This cause came before this Court on the Motion of J. Lee Covington, II, Superintendent of Insurance of the State of Ohio, and Rehabilitator of LMI Insurance Company ("LMI"), pursuant to Ohio Rev. Code 3903.16(A), for a Final Order of Liquidation and Appointment of Liquidator with respect to LMI.

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 in his motion and that there exists a present and urgent necessity for the immediate entry of this Order. This Court further finds that:

1. Defendant LMI is a property and casualty insurance company domiciled in Ohio, and is subject to the provisions of Revised Code Chapter 3903.
2. On March 20, 2000, the Court issued an Order Appointing Rehabilitator which placed LMI in rehabilitation pursuant to Ohio Rev. Code §3903.13 and contained, *inter alia*, the following findings:

a) Defendant LMI is in such condition that its further transaction of business would be financially hazardous to its creditors and/or the public, as described under Ohio Rev. Code 3903.12(A).

3. In addition to the findings made in its March 20, 2000 Order, the Court now finds that LMI is insolvent as defined in Ohio Rev. Code 3903.01(K).

4. LMI is in such condition that further attempts to rehabilitate it would substantially increase the risk of loss to its creditors and/or the public or would be futile, as described in Ohio Rev. Code 3903.16(A).

5. LMI, 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 under any charter, permit, license, registration, certificate of authority, power or privilege of Defendant, and that all officers, directors, employees, representatives, banks, savings and loan associations, corporations, depositors, employers' welfare trusts, unions, brokers, agents, reinsurers, and other legal entities should be enjoined and restrained from removing or disposing of any of the assets, books, records or property of Defendant LMI, or of any debt or claim owed to, by or for said Defendant, without the express written authorization of the Liquidator.

6. Without the appointment of a Liquidator, Defendant LMI may cause harm to the interests of its creditors and/or the public in general, and that unless restrained, Defendant will be forced to operate in a condition contrary to the best interests of Defendant's creditors and the general public.

7. Counsel for Highlands Insurance Group, the ultimate parent of Defendant LMI, appeared and indicated that it would not present a defense on behalf of Defendant LMI.

8. The previous Order of this court approving the Compromise Agreements is incorporated herein by reference and those agreements will be binding on the Liquidator.

It is hereby ORDERED, ADJUDGED and DECLARED as follows:

1. Sufficient cause exists for the liquidation of Defendant LMI:
 - a) The grounds for Rehabilitation found in this Court's earlier Order of Rehabilitation continue to exist and therefore form a basis for liquidation under Ohio Rev. Code 3903.17(A);
 - b) Defendant LMI is insolvent and is therefore subject to liquidation under Ohio Rev. Code 3903.17(B); and
 - c) Defendant LMI is in such condition that the further transaction of business would be hazardous, financially or otherwise, to its creditors and/or the public and is therefore subject to liquidation under Ohio Rev. Code 3903.17(C).

Defendant LMI is therefore ordered into liquidation pursuant to Ohio Rev. Code Chapter 3903.

2. J. Lee Covington, II, Superintendent of Insurance for the Ohio Department of Insurance, and his successors in office, is appointed Liquidator of Defendant LMI for the purpose of the liquidation of Defendant pursuant to the provisions of Ohio Rev. Code Chapter 3903. Douglas L. Hertlein is hereby appointed Chief Deputy Liquidator with Rick Clayton and John Carraher appointed as Deputy Liquidators, pursuant to Ohio Rev. Code 3903.21 (A)(1). The Liquidator, any Deputy Liquidator and any employee who serves under the Liquidator is provided the indemnification specified in Ohio Rev. Code 3903.07.

3. The Liquidator shall forthwith take and secure possession of all assets and property of Defendant LMI, of every kind whatsoever and wherever located, whether in the

possession of Defendant LMI or its officers, directors, employees, consultants, attorneys, agents, parents, subsidiaries, affiliated corporations or those acting in concert with any of these persons, and any other persons, including, but not limited to, all property, offices maintained by LMI, contracts, deposits, securities, rights of action, accounts, documents, papers, evidences of debt, bonds, debentures, mortgages, furniture, fixtures, office supplies, safe deposit boxes, legal/litigation files, and all books and records of Defendant, wherever located, and administer them under the general supervision of the Court.

4. The Liquidator is vested by operation of law with the title to all assets of Defendant LMI, including, but not limited to, all property, deposits, stocks, securities, contracts, rights of action, accounts, documents, papers, evidences of debt, bonds, debentures, mortgages, furniture, fixtures, office supplies, legal/litigation files, books, records and all other assets of Defendant, 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 collect and liquidate the assets of Defendant LMI, including but not limited to, funds held by LMI agents, subagents, producing agents, brokers, reinsurers, reinsurance intermediaries, reinsurance pools, solicitors, service representatives, or others under agency contracts or otherwise, which are due and unpaid to LMI, including premium, unearned commissions, agents' balances and agents' reserve funds, reinsurance recoveries and "funds held" by reinsurers.

6. The Liquidator is vested with the right, title and interest in all funds recoverable under the treaties, contracts and agreements of reinsurance heretofore entered into by Defendant LMI, as the ceding insurer, and all reinsurers, reinsurance pools, brokers, or other persons involved with Defendant LMI are permanently restrained and enjoined from making, attempting

to make, or encouraging others to make, any settlements with any claimant, policyholder or any other person than the Liquidator, without the prior written permission or consent of the Liquidator; provided, however, that a guaranty association or foreign guaranty association may settle their covered obligations with appropriate claimants and others.

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

(a) Appoint one or more special deputies to act for him under Sections 3902.01 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 personnel 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 employed from the funds or assets of Defendant LMI, as well as all other administrative expenses of taking possession of, conserving, collecting, conducting, liquidating, disposing of or otherwise dealing with, the business and property of Defendant LMI. In the event that the property of Defendant LMI does not contain sufficient cash or liquid assets to defray the administrative costs incurred, the Superintendent of Insurance may advance the administrative costs so incurred out of any appropriation for the maintenance of the Department of Insurance. Any amounts so advanced for administrative expenses shall be repaid to the Superintendent for the use of the Department of Insurance out of the first available money of Defendant LMI ;

(e) Adopt such Administrative Operating Procedures, from time to time, as are necessary to aid in the efficient, economic and effective administration of the liquidation of Defendant LMI, subject to the approval of such procedures by the Court;

(f) Hold hearings, subpoena witnesses to compel their appearance, administer oaths, examine any person under oath and compel any person to subscribe to their 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;

(g) Collect all debts and monies due and claims belonging to Defendant LMI, wherever located, which in the judgment of the Liquidator are economically feasible to collect.

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 Defendant LMI's assets or property, including the power to sell, compound, compromise or assign debts for purposes of collection upon such terms and conditions as the Liquidator considers best;

(iii) Pursue any creditors' remedies available to enforce such creditors' claims,

(h) Conduct public or private sales of the property of Defendant LMI;

(i) Use assets of the estate of Defendant LMI to transfer policy obligations to a solvent assuming insurer, if the transfer can be arranged without prejudice to applicable priorities under Ohio Rev. Code 3903.42;

(j) Acquire, hypothecate, encumber, lease, improve, sell, transfer, abandon or otherwise dispose of or deal with, any property of Defendant LMI 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;

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

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

(m) Continue to prosecute and to commence in the name of Defendant LMI 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;

(n) If Defendant LMI is dissolved under Ohio Rev. Code 3903.20, to apply to any court in this state or elsewhere for leave to substitute himself for Defendant LMI as plaintiff;

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

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

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

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

(s) 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 LMI is located;

(t) Assert all defenses available to Defendant LMI as against third persons, including, but not limited to, statutes of limitations, statutes of frauds and the defense of usury. A waiver of any defense by Defendant LMI after a complaint in liquidation has been filed does not bind the Liquidator;

(u) Exercise and enforce all the rights, remedies and powers of any creditor, shareholder, policyholder, including any power to avoid any transfer or lien that may be given by the general law and that is not included under Ohio Rev. Code 3903.26 to Ohio Rev. Code 3903.28;

(v) 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;

(w) 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;

(x) Take title and possession of all LMI securities deposited by Defendant LMI within the Ohio Department of Insurance and any other state Director of Insurance or other public official;

(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 law of receivers of this state authorizing the appointment of Insurance Liquidators, and, particularly, be and thereby is granted and given all powers and authority in R.C. Chapter 3903, including, without limitation, those enumerated herein.

9. All officers, directors, trustees, employees, brokers, agents, reinsurers of Defendant LMI, attorneys representing LMI and/or its policyholders or any other person, firm, association, partnership, corporation or other entity with authority over or in charge of any aspect of Defendant LMI's affairs, property, or assets including but not limited to, insurers, brokers, agents, trusts, banks, savings and loan associations, financial or lending institutions, stock or mutual associations, reinsurers and any parent, holding company, subsidiary or affiliated corporation or any other representative acting in concert with Defendant LMI ("Other Entities"), shall cooperate with the Liquidator in the performance of his duties. The directive "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 and deliver to the Liquidator any books, accounts, documents, agreements, records, legal/litigation files, information or property of, or pertaining to, Defendant LMI in his possession, custody or control.

10. No officer, director, employee, consultant, attorney, parent, subsidiary or affiliated corporation, partner, agent, reinsurer, representative of Defendant LMI or any other person acting in concert with Defendant LMI, 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 LMI under any charter, permit, license, power or privilege, belonging to or heretofore issued by or to said Defendant LMI, and from in any manner conducting, doing or engaging in the business of insurance on behalf of Defendant LMI.

11. All persons are hereby restrained from dealing with or permitting to be done any action which might waste or dispose of the property or assets of LMI; from disposing of, using, transferring, selling, assigning, cancelling, hypothecating, concealing in any manner or in any way, or exercising any alleged right of set off with respect to any books, records, legal/litigation files, equipment, money, accounts receivable, stocks, bonds, assets, notes, funds or any other property or other assets of Defendant LMI, whether real, personal or mixed, or of any kind or nature, wherever situated, including any claims or causes of action that Defendant LMI might have against any person, firm, association or corporation, belonging to, owned by, in the possession of, or claimed by Defendant LMI; 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 LMI, or any account held individually, jointly, or severally, for Defendant LMI, whether such account, debt, deposit, share account, trust account, or any other assets owned or held for such Defendant in the name of or for the benefit of Defendant LMI or under any other name.

12. All officers, directors, employees, agents, servants, attorneys, reinsurers, creditors, representatives of Defendant LMI and those acting in concert with Defendant LMI and Other Entities as described in Paragraph 9, 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 LMI not located on the premises of Defendant LMI including, but not limited to, all bank accounts, safe deposit boxes, safes, stock certificates, bonds, certificates of deposit, cash, security, legal/litigation files 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 of the assets, books, property, records, legal/litigation files or reports of Defendant LMI except under the express authorization of the Liquidator or by the further order of this Court.

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

(a) From disposing of, using, releasing, transferring, withdrawing, withholding, allowing to be withdrawn or concealing in any manner or in any way of the property or assets of Defendant LMI, 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 LMI or any account, debt, share account, trust account, or other assets owned or held individually, jointly, or severally, for Defendant LMI, whether such account, debt, deposit, share account, trust account, or any other asset 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 acquiring all property, assets, books, documents, legal/litigation files or records which are the property or assets of Defendant LMI, and/or have been ordered to be tendered to the Liquidator by the provisions of this Order or other order of this Court, under whatever name such books, documents, legal/litigation files or records may be filed or found or wheresoever such books, documents, legal/litigation files or records may be found or situated; and from doing anything, directly or indirectly, to prevent the Liquidator from gaining access to, acquiring, examining or investigating all other books, documents, legal/litigation files or records pertaining to or concerning Defendant LMI or its affairs, under whatever name such books, documents, legal/litigation files or records may be filed or found or wheresoever such books, documents, legal/litigation files 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, legal/litigation files, records, or reports of Defendant LMI;

14. The Liquidator shall take all steps necessary to place all bank accounts, stock certificates, securities, certificates of deposit and other financial instruments of Defendant LMI into his own name, and shall use any accounts of Defendant LMI, 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.

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

16. All agents and brokers of Defendant LMI are enjoined and restrained from returning to policyholders/insureds or premium finance companies, any money in their possession collected for premiums, and all premium finance companies which have entered into contracts to finance a premium for a policy which has been issued by Defendant LMI are enjoined from returning to policyholders/insureds 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 Liquidator.

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

18. No civil action shall be commenced against Defendant LMI or the 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 LMI necessitates intervention in any action against LMI 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 LMI.

19. 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 LMI 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, in 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 action, and where in any such case the period has not expired at the date of the filing of the Motion for an Order of Liquidation, the Liquidator may, for the benefit of Defendant LMI, take any such action or do any such act, required of or permitted to Defendant LMI 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.

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

21. All persons, including policyholders, obligees, principals, creditors, stockholders of Defendant LMI 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 workmen's 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 Liquidator's exclusive right, title and interest to funds recoverable under treaties and agreements of reinsurance heretofore entered into by Defendant LMI as the ceding insurer.

22. All of LMI's policies as to which a notice of cancellation was not given on or prior to the date of this Final Order of Liquidation and which are covered by a guaranty association or foreign guaranty association shall continue in force for such period of time and under such terms as are provided for by the applicable guaranty associations. All policies not covered by a guaranty association or foreign guaranty association shall terminate pursuant to Ohio Rev. Code 3903.19 upon the occurrence of the lesser of:

- (a) A period of 30 days from the date of entry of this Final Order of Liquidation;
- (b) The expiration of the policy coverage;
- (c) The date when the insured has replaced the insurance coverage with equivalent insurance in another insurer or otherwise terminated the policy; or
- (d) The Liquidator has effected a transfer of the policy obligation pursuant to Ohio Rev. Code 3903.21.

All policies as to which a notice of cancellation was given on or prior to the date of entry of this Final Order of Liquidation shall stand cancelled as of the date specified in the notice.

23. The Liquidator is authorized to cancel all executory contracts, except the contracts of insurance and other similar obligations and contracts which are cancelable as provided in

Paragraph 22 herein, and all liability thereunder shall cease and be fixed as of the date of the Entry of this Final Order of Liquidation, except as provided in R.C. 3903.19 and 3903.37, and that such impending cancellations shall not be treated as anticipatory or other breach of contracts.

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

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

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

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

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

29. The Liquidator, or any successor in office, is hereby authorized, permitted and allowed to sell, assign and transfer the Corporate Charter of Defendant LMI and any and all insurance licenses or certificates of authority held by Defendants in such a method and manner as may be approved by this Court.

30. All proceedings in which LMI is a party or is obligated to defend a party in any court in this state are stayed for 60 days from the date of this order, as mandated by the provisions of Ohio Rev. Code 3956.17, to permit a proper defense by a guaranty association or foreign guaranty association of all pending causes of action. All proceedings in which LMI is a

party in any court outside of Ohio are stayed for the maximum period of time mandated by the applicable stay provision of the affected state's guaranty association statute, but in no event for a period of time less than ninety (90) days from the date of this order, to permit a proper defense by the appropriate state guaranty association of all pending causes of action.

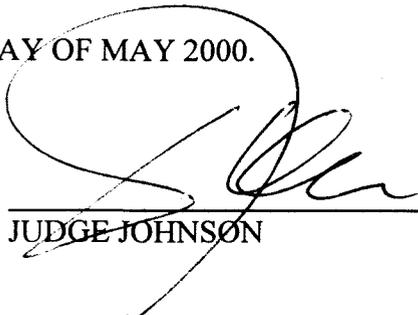
31. All attorneys/law firms who are either providing or have provided representation or other legal services to LMI, shall tender over possession and control to the Liquidator within five working days from the receipt of notice of this order, all legal/litigation files and all other pleadings, memoranda, discovery, motions, notes, photographs, videotapes, physical evidence, property, documents, records, reports and files which are in their possession or control and which are related to the providing of representation or other legal services to LMI or to any LMI insured by virtue of their policy with LMI.

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

33. This Order is a final judgment, and defendant LMI is in liquidation effective today.

34. 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 the interests of the creditors, stockholders or the members of the public may require.

IT IS SO ENTERED THIS 22^d DAY OF MAY 2000.



JUDGE JOHNSON

