

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

**IN THE MATTER OF THE REHABILITATION)
OF LUMBERMENS MUTUAL CASUALTY)
COMPANY AND AMERICAN MANUFACTURERS)
MUTUAL INSURANCE COMPANY)**

-----) **NO.: 12 CH 24227**

**PEOPLE OF THE STATE OF ILLINOIS, *ex rel.*)
ANDREW BORON, DIRECTOR OF)
INSURANCE OF THE STATE OF ILLINOIS,)**

Plaintiffs,)

v.)

**AMERICAN MOTORISTS INSURANCE COMPANY,)
an Illinois domestic stock insurance company)**

Defendant.)

AGREED ORDER OF REHABILITATION

THIS CAUSE COMING TO BE HEARD upon the First Amended Verified Complaint for Rehabilitation filed herein by THE PEOPLE OF THE STATE OF ILLINOIS, upon the relation of ANDREW BORON, Director of Insurance of the State of Illinois (the "Director"), seeking an Order of Rehabilitation as to and against Lumbermens Mutual Casualty Company ("Lumbermens"), American Manufacturers Mutual Insurance Company ("American Manufacturers"), and American Motorists Insurance Company ("AMICO"), pursuant to the provisions of Article XIII of the Illinois Insurance Code (the "Code"), 215 ILCS 5/187 *et seq.* ("Article XIII"); 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 Hereby Finds That:

A. As to Count I of the Director's First Amended Verified Complaint for Rehabilitation, an Agreed Order was entered in this proceeding on July 2, 2012 placing both Lumbermens and American Manufacturers in rehabilitation.

B. Sufficient cause exists for the entry of an order for rehabilitation of the Defendant, AMICO, including the fact that a majority of its directors have agreed and consented to the entry of this Agreed Order of Rehabilitation.

C. Pursuant to Section 191 of the Code, 215 ILCS 5/191, the entry of this Agreed Order of Rehabilitation creates an estate comprising of all of the liabilities and assets of AMICO.

D. Upon the entry of this Agreed Order of Rehabilitation, the Rehabilitator's statutory authority includes, without limitation, the following:

- (i) Pursuant to Section 191 of the Code, 215 ILCS 5/191, the Rehabilitator is vested by operation of law with the title to all property, contracts, and rights of action of AMICO; and
- (ii) Pursuant to Section 191 of the Code, 215 ILCS 5/191, the Rehabilitator is entitled to immediate possession and control of all property, contracts, and rights of action of AMICO; and

- (iii) Pursuant to Section 191 of the Code, 215 ILCS 5/191, the Rehabilitator is authorized to remove any and all records and property of AMICO to his possession and control or to such other place as may be convenient for purposes of the efficient and orderly administration of the rehabilitation of AMICO; and
- (iv) Pursuant to Section 192(2) of the Code, 215 ILCS 5/192(2), the Rehabilitator is authorized to deal with the property, business and affairs of AMICO in his name, as Director, and that the Rehabilitator is authorized to deal with the property, business and affairs of AMICO in the name of AMICO; and
- (v) Pursuant to Section 192(2) of the Code, 215 ILCS 5/192(2), the Rehabilitator, without the prior approval of the Court, is authorized to sell or otherwise dispose of any real or personal property of AMICO, or any part thereof, and to sell or compromise all debts or claims owing to AMICO having a value in the amount of Twenty-Five Thousand (\$25,000.00) Dollars, or less. Any such sale by the Rehabilitator of the real or personal property of AMICO having a value in excess of Twenty-Five Thousand (\$25,000.00) Dollars, and sale or compromise of debts owing to AMICO by the Rehabilitator where the debt owing to AMICO exceeds Twenty-Five Thousand (\$25,000.00) Dollars shall be made subject to the approval of the Court; and
- (vi) Pursuant to Section 192(2) of the Code, 215 ILCS 5/192(2), the Rehabilitator may solicit contracts whereby a solvent company agrees to assume, in whole or in part, or upon a modified basis, the liabilities of a company in rehabilitation in a manner consistent with subsection (4) of Section 193 of the Code, 215 ILCS 5/193(4); and

- (vii) Pursuant to Section 192(3) of the Code, 215 ILCS 5/192(3), the Rehabilitator is authorized to bring any action, claim, suit or proceeding against any person with respect to that person's dealings with AMICO including, but not limited to, prosecuting any action, claim, suit, or proceeding on behalf of the policyholders, claimants, beneficiaries or creditors of AMICO; and
- (viii) Pursuant to Section 192(4) of the Code, 215 ILCS 5/192(4), if at any time the Rehabilitator finds that it is in the best interests of the policyholders, claimants, beneficiaries, and creditors to effect a plan of rehabilitation, the Rehabilitator may submit such a plan to the Court for its approval; and
- (ix) Pursuant to Section 194(b) of the Code, 215 ILCS 5/194(b), the Rehabilitator may, within two (2) years after the entry of this Agreed Order of Rehabilitation 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 the rehabilitation order was entered; and
- (x) Subject to the provisions of Section 202 of the Code, 215 ILCS 5/202, the Rehabilitator 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 this Court, from the assets of AMICO, all administrative expenses incurred during the course of the rehabilitation of AMICO; and
- (xi) Pursuant to Section 203 of the Code, 215 ILCS 5/203, the Rehabilitator 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

- (xii) Pursuant to the provisions of Section 204 of the Code, 215 ILCS 5/204, the Rehabilitator may seek to avoid preferential transfers of the property of AMICO and to recover such property or its value, if it has been converted, except for payments made in the ordinary course of business or payments made pursuant to 215 ILCS 5/204(m)(C).

E. During the involvement of the Department, its advisors and consultants, and other state regulators and representatives of state guaranty funds in the oversight of AMICO's runoff, no negligent act, error or omission by the Board of Directors or management of AMICO was identified for the time period of January 2003 through July 23, 2012.

F. The Department has issued over 500 separate written directions or approvals to Lumbermens, American Manufacturers, and AMICO on specific transactional or operational matters pertaining to the run-off.

G. The Department has received and reviewed numerous reports that evaluated the causes for the runoff, and evaluated the conduct of the run-off, of AMICO including the following:

- (i) Kenning Reports from 2003 and 2004;
- (ii) Periodic McGladrey/RRC reports; and
- (iii) The December 31, 2005 and December 31, 2010 statutory financial examination reports.

H. The reports listed in (G), above, did not identify actionable negligent acts, errors or omissions by the pre-January, 2003 members of the Board of Directors or management of AMICO.

I. In light of the foregoing, and the passage of over eight years of the runoff, no third party has asserted any negligent act, error or omission by members of the Board of Directors or management of AMICO relating to its insurance operations, the Director, in filing the verified complaint for rehabilitation, believes there is no current basis for asserting a claim or alleging any wrongful act by members of the Board of Directors or management of AMICO as of the date of this First Amended Verified Complaint For Rehabilitation. Further, in light of the investigations that were instituted during the time period of January 2003-June 2004 relating to the activities of members of the Board of Directors and management of AMICO prior to January 1, 2003, and the passage of over eight years of runoff, the Director, in filing this First Amended Verified Complaint For Rehabilitation, has found no basis for additional investigations against such members of the Board of Directors or management of AMICO.

J. The Rehabilitator may, in his sole discretion, retain some or all of the staff in AMICO's Lake Zurich facility.

K. Subject to the approval of the Court, as necessary, the Rehabilitator may in his sole discretion determine whether to maintain or modify the existing retention and severance plans of AMICO.

L. All reasonable operating fees and expenses, including those of accountants, actuaries, lawyers and consultants, incurred prior to entry of this Agreed Order of Rehabilitation may be paid in the normal course of business.

It Is Hereby Ordered That:

1. The terms and provisions of the July 2, 2012 Agreed Order of Rehabilitation entered as, to and against Lumbermens and American Manufacturers are incorporated in this order.
2. This Order of Rehabilitation is entered as, to and against AMICO.
3. The AGREED CORRECTIVE ORDER 01-2003, dated February 10, 2003, AGREED CORRECTIVE ORDER 02-2003, dated March 5, 2003, and the AGREED CORRECTIVE ORDER 03-2003 entered into as of March 26, 2003, as amended through and including the NINTH AMENDED AND AGREED CORRECTIVE ORDER 03-2003 dated February 28, 2012, and the AMICO's Run-Off Plan dated March 19, 2004 and approved June 9, 2004, as updated annually, and the proceedings arising from the foregoing, are terminated.
4. There being no just reason for delaying enforcement or appeal of this order, this Order of Rehabilitation is a final order within the meaning of Illinois Supreme Court Rule 307(a)(5).
5. Andrew Boron, Director of Insurance of the State of Illinois, and his successors in office, is affirmed as the statutory Rehabilitator (the "Rehabilitator") of AMICO, with all of the powers appurtenant thereto.
6. All treaties, contracts and agreements of reinsurance, wherein AMICO 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. All treaties, contracts and agreements of reinsurance wherein AMICO was, or is, the assuming or retrocessional reinsurer are canceled on a cut-off basis, effective upon the entry of this Order of Rehabilitation; notwithstanding

the foregoing, all treaties, contracts and agreements of reinsurance under which AMICO was the ceding company and Lumbermens was the assuming company, or under which a direct or indirect subsidiary or affiliate of Lumbermens was the ceding company and Lumbermens was the assuming company, including but not limited to the intercompany quota share pooling agreement as amended on December 31, 2003, shall remain in full force and effect.

7. Subject to the further orders of the Court, the Rehabilitator is authorized to take such actions as the nature of the cause and the interests of AMICO, and its policyholders, claimants, beneficiaries, creditors, or the public may require including, but not limited to, the following:

- (a) The Rehabilitator shall proceed to take immediate possession and control of the property, books, records, accounts, business and affairs, and all other assets of AMICO, and of the premises occupied by them for the transaction of their business, and to marshal and liquidate the assets, business and affairs of AMICO pursuant to the provisions of Article XIII of the Code, *supra*, and the Rehabilitator is further directed and authorized to wind down and terminate the business and affairs of AMICO, and to make the continued expenditure of such wages, rents and expenses as he may deem necessary and proper for the administration of the rehabilitation of AMICO; and
- (b) The Rehabilitator may both sue and defend on behalf of AMICO, or for the benefit of the policyholders, claimants and other creditors of AMICO, in the courts either in his name as the Rehabilitator of AMICO, or in the name of AMICO, as the case may be.

8. The Director is vested with the right, title and interest in all funds recoverable under contracts, treaties, certificates, and agreements of reinsurance heretofore entered into by or on behalf of AMICO, and that all reinsurance companies involved with AMICO are restrained and enjoined from making any settlements with any claimant or policyholder of AMICO, or any other person, other than the Director as Rehabilitator, except with the written consent of the Director, except when the reinsurance contract, treaty, certificate, or agreement expressly and lawfully provides for payment by the reinsurer directly to a claimant or policyholder on the behalf of AMICO.

9. Any acts or omissions of the Rehabilitator in connection with the rehabilitation, shall not be construed or considered to be a preference within the meaning of Section 204 of the Code, 215 ILCS 5/204, notwithstanding the fact that any such act or omission may cause a policyholder, claimant, beneficiary, third party or creditor to receive a greater percentage of debt owed to or by AMICO than any other policyholder, claimant, member, third party or creditor in the same class.

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

**IN THE MATTER OF THE REHABILITATION
OF LUMBERMENS MUTUAL CASUALTY
COMPANY, AMERICAN MANUFACTURERS
MUTUAL INSURANCE COMPANY AND
AMERICAN MOTORISTS INSURANCE COMPANY**

11. All costs of these rehabilitation proceedings shall be taxed and assessed against the Defendant, AMICO.

12. Pursuant to its authority under Section 189 of the Code, 215 ILCS 5/189, the Court hereby issues the following mandatory and prohibitive injunctions:

- (a) All accountants, auditors and attorneys of AMICO are ordered to deliver to the Rehabilitator, at his request, copies of all documents in their possession or under their control concerning or related to AMICO, and to provide the Rehabilitator with such information as he may require concerning any and all business and/or professional relationships between them and AMICO, and concerning any and all activities, projects, jobs and the like undertaken and/or performed by them at the request of AMICO, or its agents, servants, officers, directors and/or employees, or which AMICO may be, or is, entitled to as the result of its relationship with such accountants, auditors and attorneys; and
- (b) AMICO and its directors, officers, agents, servants, representatives, employees, and affiliated companies, and all other persons and entities, shall give immediate possession and control to the Rehabilitator of all property, business, books, records and accounts of AMICO, and all premises occupied by AMICO for the transaction of its business; and
- (c) AMICO and its officers, directors, agents, servants, representatives and employees, and all other persons and entities having knowledge of this Order are restrained and enjoined from transacting any business of AMICO, or disposing of any company property or assets, including books, records and computer and other electronic data, without the express written consent of the Rehabilitator, or doing or permitting to be done any action which might waste the property or assets of AMICO, until the further order of this Court; and
- (d) The officers, directors, agents, servants, representatives and employees of AMICO, and all other persons and entities having knowledge of this Order are

restrained and enjoined from bringing or further prosecuting any claim, action or proceeding at law or in equity or otherwise, whether in this State or elsewhere, against AMICO, or their property or assets, or the Director or Rehabilitator, except insofar as those claims, actions or proceedings arise in or are brought in these rehabilitation proceedings; or 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 AMICO, or its property or assets while in the possession and control of the Rehabilitator, or from interfering in any way with the Rehabilitator in his possession or control of the property, business, books, records, accounts, premises and all other assets of AMICO s, until the further order of this Court; and

- (e) Any and all banks, brokerage houses, financial institutions and any and all other companies, persons or entities having knowledge of this Order having in its possession accounts and any other assets which are, or may be, the property of AMICO, are restrained and enjoined from disbursing or disposing of said accounts and assets unless otherwise authorized or approved by the Rehabilitator and are further restrained and enjoined from disposing of or destroying any records pertaining to any business transaction between AMICO, and such banks, brokerage houses, financial institutions, companies, persons or entities having done business, or doing business, with AMICO, or having in their possession assets which are, or may be, the property of AMICO, and further, that each such person or entity is ordered to immediately deliver any and all such assets and/or records to the Rehabilitator; and

(f) All insurance and reinsurance companies and entities that assumed liabilities from AMICO arising under either contracts, policies of insurance, certificates of insurance, or agreement, contracts, treaties or certificates of reinsurance issued by AMICO, are restrained and enjoined from making any settlements with any claimant or policyholder of AMICO, or any other person other than the Rehabilitator, except with the written consent of the Rehabilitator except when the reinsurance agreement, contract, treaty, or certificate expressly and lawfully provides for payment to or on the behalf of AMICO's insured by the reinsurer.

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

14. Such further, different or other relief as this Honorable Court may deem proper in the premises.

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ENTERED
ENTERED
JUDGE KATHLEEN M. PANTLE-1775
AUG 16 2012
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