

DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock Street Denver, Colorado 80202	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
DOUG DEAN, Commissioner of Insurance of the State of Colorado Petitioner, v. COLORADO WESTERN INSURANCE COMPANY., a Colorado Domestic Casualty Company, Respondent.	
JOHN W. SUTHERS, Interim Attorney General James F. Carr, Reg. No. 9343 1525 Sherman Street, 5th Floor Denver, Colorado 80203 (303) 866-5283	Case Number: 04 CV 4126 Ctrm.: 19
ORDER OF LIQUIDATION, APPOINTMENT OF RECEIVER IN LIQUIDATION AND ENTRY OF INJUNCTION	

The above matter having come before the Court upon the Petitioner's Verified Petition for Order of Liquidation and Appointment of Receiver in Liquidation, pursuant to C.R.S. § 10-3-515 and C.R.S. § 10-3-516, and the Court having considered the Verified Petition, and being fully advised in the premises, does hereby find and order as follows:

Grounds for Entry of Order of Liquidation

1. For the reasons set forth in the Verified Petition, this Court finds that the entry of an order of liquidation against Respondent Colorado Western Insurance Company is necessary and appropriate.
2. Pursuant to C.R.S. § 10-3-515, further efforts to rehabilitate Respondent would substantially increase the risk of loss to creditors, policyholders or the public, or would be futile.
3. Pursuant to C.R.S. § 10-3-516, Respondent is insolvent pursuant to C.R.S. § 10-3-212, and is in such a condition that the further transaction of business would be hazardous financially to its policyholders, its creditors or the public.

Appointment of Liquidator - Powers and Duties

Liquidator

4. Petitioner Doug Deau, as Commissioner of Insurance for the State of Colorado, is hereby appointed Receiver in liquidation to serve as Liquidator for Respondent.

Retention of Special Deputies and Consultants

5. Pursuant to C.R.S. § 10-3-520(1)(d), this Court hereby approves the Liquidator's retention of Brian J. Spano and Franklin D. O'Loughlin of Rothgerber Johnson & Lyons LLP to serve as the Special Deputies, Co-Liquidators and Co-Receiver ("Co-Receiver"), to be reimbursed for services and costs at their customary and ordinary rates, which shall constitute expenses of administration during this liquidation pursuant to C.R.S. § 10-3-541(1)(a).

6. Pursuant to C.R.S. § 10-3-520(1)(d), this Court confirms the Liquidator's retention of D.E. Wilson & Associates, Inc. to serve as a consultant to the Liquidator and the Special Deputies, Co-Liquidators and Co-Receiver, to be reimbursed for services and costs at its customary and ordinary rates, which shall constitute expenses of administration during this liquidation pursuant to C.R.S. § 10-3-541(1)(a).

Possession and Administration of Respondent's Assets

7. The Liquidator is hereby directed and instructed to proceed forthwith to assemble and to take possession of all of the assets of Respondent, including any funds or securities held by the Division of Insurance pursuant to C.R.S. § 10-3-201 and any deposits held by any other state departments of insurance, to administer them under the general supervision of this Court and to preserve the same by liquidation of the business, or otherwise, for the benefit and protection of all policyholders and creditors and to do all other acts generally required of receivers under the direction of this Court in accordance with the provisions of Colorado law, including to collect, value and sell Respondent's assets

8. Upon taking possession and control of Respondent's assets, the Liquidator shall be and is hereby authorized, subject to the direction of this Court, to take such steps as are necessary and authorized by the laws of Colorado to liquidate the affairs and business of Respondent, and shall have all the powers of the Respondent's directors, officers, shareholders and managers, whose authority shall be suspended by this Order except insofar as they are redelegated by the Liquidator.

9. The Liquidator shall be and hereby is authorized to make such payments and disbursements as may be proper for the preservation of the properties of Respondent, including the authority to make payments of debts entitled to priority.

10. The Liquidator shall be and is hereby authorized to receive and collect all sums of money due or owing to Respondent in any manner whatsoever whether the same is now or shall hereafter become due and payable. The Liquidator is authorized to incur such expenses and make such disbursements as may in his discretion be advisable or necessary in connection with the possession and administration of Respondent's assets.

Title to Respondent's Assets

11. Pursuant to C.R.S. § 10-3-517, the Liquidator is vested by operation of law with title to all of the property, contracts, rights of action, and books and records of Respondent, wherever located, as of the date of entry of this Order. The filing or recording of this Order with the clerk of the District Court in and for the City and County of Denver and the recorder of deeds of the county in which Respondent's principal office or place of business is located, or in the case of real estate, with the recorder of deeds of the county where the property is located, shall impart the same notice as would be imparted by a deed, bill of sale, or other evidence of title duly filed or recorded with that recorder of deeds.

Financial Reporting

12. Pursuant to C.R.S. § 10-3-517(5), the Liquidator shall make financial reports to this Court within one year after the date of this Order and at least annually thereafter. The financial reports shall include, at a minimum, the assets and liabilities of Respondent and all funds received or disbursed by the Liquidator during the reporting period.

Powers of Liquidator

13. The Liquidator shall have all powers specified in C.R.S. § 10-3-520 including, but not limited to:

a. To appoint a special deputy or deputies to act for the Liquidator under Part 5, Article 3, Title 10 and to determine the reasonable compensation of such special deputy. The special deputies, including the Co-Receivers appointed hereunder, shall have all powers of the Liquidator granted by C.R.S. § 10-3-520. The special deputies shall serve at the pleasure of the Liquidator.

b. To employ employees, agents, legal counsel, actuaries, accountants, appraisers, consultants, and such other personnel as the Liquidator may deem necessary to assist in the liquidation of Respondent.

- c. To fix the reasonable compensation of employees, agents, legal counsel, actuaries, accountants, appraisers, and consultants, subject to the approval of this Court.
- d. To hold hearings, subpoena witnesses and compel their attendance, administer oaths, examine any person under oath, and compel any person to subscribe to the person's testimony after it has been correctly reduced to writing; and, in connection therewith, to require the production of any books, papers, records or other documents which the Liquidator deems relevant to the inquiry.
- e. To audit the books and records of all agents of Respondent insofar as those records relate to the business activities of Respondent.
- f. To collect all debts and monies due and claims belonging to Respondent, wherever located, and for this purpose.
- g. To institute timely action in other jurisdictions, in order to forestall garnishment or attachment proceedings against such debts.
- h. To 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 the Liquidator deems best.
- i. To pursue any creditors' remedies available to enforce the Liquidator's claims.
- j. To conduct public and private sales of the property of Respondent.
- k. To acquire, hypothecate, encumber, lease, improve, sell, transfer, abandon, or otherwise dispose of or deal with any property of Respondent at its market value or upon such terms and conditions as are fair and reasonable. The Liquidator shall also have the power to execute, acknowledge and deliver any and all deeds, assignments, releases and other instruments necessary and proper to effectuate any sale of property or other transaction in connection with the liquidation of Respondent.
- l. To borrow money on the security of Respondent's assets or without security and to execute and deliver all documents necessary to such transaction for the purpose of facilitating the liquidation. Any funds so borrowed may be repaid as an administrative expense and may be given priority over any other claims in Class 1 under the priority distribution pursuant to C.R.S. § 10-3-541.
- m. To enter into such contracts as are necessary to carry out this Order to liquidate Respondent and to affirm, disavow or terminate any contracts to which

Respondent is a party including, but not limited to, any lease agreements, management agreements, claims service agreements and/or assumed reinsurance agreements.

n. To continue to prosecute and to institute in the name of Respondent or in the Liquidator's own name any and all suits and other legal proceedings, in this state or elsewhere, and to abandon the prosecution of claims deemed unprofitable to pursue further.

o. To prosecute any action which may exist on behalf of the creditors, members, policyholders or shareholders of Respondent against any officer of Respondent or any other person.

p. To remove any records and property of Respondent to the offices of the Commissioner or such other place as may be convenient for the purposes of efficient and orderly execution of the liquidation of Respondent, and to make reasonable accommodations for the storage of Respondent's records and other property.

q. To deposit in one or more banks in this state such sums as are required to meet current administration expenses and dividend distributions.

r. To invest all sums not currently needed unless the Court orders otherwise.

s. To file any necessary documents for record in the office of any recorder of deeds or record office where property of Respondent is located, in this state or elsewhere.

t. To assert all defenses available to Respondent as against third persons, which defenses shall include, but not be limited to, statutes of limitations, statutes of frauds, and the defense of usury. A waiver of any defense by Respondent after the Verified Petition for Order of Liquidation was filed herein shall not bind the Liquidator.

u. To 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 conferred by law whether or not such power is conferred by C.R.S. §§ 10-3-525 to 10-3-527.

v. To intervene in any proceeding, wherever instituted, which could result in the appointment of a receiver or trustee, and to act as the receiver or trustee whenever such appointment is offered.

w. To exercise, in a manner consistent with the provisions of C.R.S. § 10-3-520 all powers now held or hereafter conferred upon receivers by the laws of the State of Colorado.

x. The Liquidator shall be and is hereby authorized to institute, prosecute and defend, compromise, adjust, intervene in or become a party to such suits, actions, proceedings in law, or in equity, in state or federal courts or before any administrative agency as may in his opinion be necessary for the proper protection, maintenance and preservation of the assets of Respondent in order to properly liquidate its affairs, and likewise to defend, compromise or adjust, or otherwise dispose of any and all suits, actions or proceedings instituted against him as Liquidator or against Respondent and also to appear in or conduct the defense of any suit or adjust or compromise any action or proceeding now pending in any court by or against Respondent where such prosecution, defense or other disposition of such suits, actions or proceedings will, in the judgment of the Liquidator, be advisable or proper.

14. The enumeration in this Order of the powers and authority of the Liquidator shall not be construed as a limitation upon the Liquidator, nor shall it exclude in any manner the Liquidator's right to do such other acts not specifically enumerated or otherwise provided for in this Order as may be necessary or appropriate for the accomplishment of, or in aid of the purpose of, the liquidation of Respondent.

15. Notwithstanding the powers of the Liquidator specified above, the Liquidator shall have no obligation to defend claims or to continue to defend claims subsequent to the entry of this Order.

Injunction, Restraints and Prohibitions

16. Pursuant to C.R.S. § 10-3-505, Respondent, its officers, directors, shareholders, policyholders, providers, creditors and all persons and other legal entities whatsoever, except for the Liquidator and his duly appointed agents, are hereby permanently enjoined, restrained and prohibited from:

- a. The exercising of any direction, control or influence whatsoever or transacting any further business of Respondent, any of its subsidiaries or their assets pending further order of this Court;
- b. Interfering in any shape, form or fashion either directly or indirectly with the Liquidator's operation of this liquidation or his possession or control of title, right and interest to the property, books, records and all other assets of Respondent;
- c. The transfer of any of Respondent's property;

- d. Interference with the Liquidator or with a proceeding initiated by the Liquidator pursuant to C.R.S. § 10-3-501 *et seq.*;
- e. Waste of the Respondent's assets;
- f. Dissipation or transfer, or both, of any funds maintained in any of Respondent's bank accounts;
- g. The commencement or further prosecution of any actions or proceedings, in law or equity, related to or in any way involving Respondent, except in this Court, including the commencement of or continuation of any action in the nature of an attachment, garnishment or execution against any of the property, personal or real, of Respondent or any of its subsidiaries or any part thereof, except in this Court;
- h. The obtaining of preferences, judgments, attachments, garnishments, or liens against Respondent, its assets, or its policyholders;
- i. The levying of execution against Respondent, its assets or its policyholders;
- j. The making of any sale or deed for nonpayment of taxes or assessments that would tend to lessen the value of the assets of Respondent;
- k. The withholding from the Liquidator of books, accounts, documents, or other records relating to the business of Respondent;
- l. Any other threatened or contemplated action that might tend to lessen the value of Respondent's assets or prejudice the rights of policyholders, creditors, or shareholders or the administration of any proceeding under C.R.S. § 10-3-501, *et seq.*; and
- m. The assertion of any claim against the Commissioner, the Liquidator, the Special Deputies or their agents and employees except insofar as such claims arise in the liquidation of Respondent presently before this Court.

17. Pursuant to C.R.S. § 10-3-523, no action at law or equity or in arbitration shall be brought against Respondent or the Liquidator, whether in this state or elsewhere, nor shall any such existing actions be maintained or further presented after issuance of this Order and the maintenance or further presentation of such actions are hereby enjoined.

18. The injunctive relief referenced in this Order is viewed as being reasonable and necessary to provide for an orderly liquidation of Respondent. Without such an orderly liquidation of Respondent, the policyholders and creditors of Respondent have less opportunity to recover any monies due them from Respondent. Because this Court believes that the

aforementioned injunctive relief is so vital to an orderly liquidation of Respondent, this Court will not recognize any lien, sale, assignment, transfer, hypothecation, security interest, judgment, order, attachment, garnishment or legal process of any kind or nature with respect to, touching on or pertaining to or affecting Respondent or its assets or the Liquidator or its agents. No such legal process shall be effective or enforceable unless entered in this Court in accordance with an order of this Court.

19. Pursuant to C.R.S. § 10-3-506:

a. Any officer, manager, director, trustee, owner, employee, or agent of agent of any insurer, or any other person with authority over or in charge of any segment of Respondent's affairs, shall cooperate with the Liquidator in this proceeding. Such cooperation shall include, but not be limited to, the following:

i. To reply promptly in writing to any inquiry from the Liquidator or Special Deputies requesting such a reply; and

ii. To make available to the Liquidator and the Special Deputies any books, accounts, documents, or other records or information or property of or pertaining to Respondent and in the person's possession, custody or control.

b. Any violation of this duty of cooperation shall be subject to the sanctions set forth in C.R.S. § 10-3-506(4).

20. No person shall obstruct or interfere with the Liquidator in the conduct of this liquidation proceeding or any investigation incidental thereto.

Collection and Listing of Assets

21. Pursuant to C.R.S. § 10-3-524, as soon as practicable after the entry of this Order but not later than one hundred twenty days thereafter, the Liquidator shall prepare in duplicate a list of Respondent's assets. The list shall be amended or supplemented from time to time as the Liquidator may determine. The Liquidator shall reduce the assets to a degree of liquidity that is consistent with the effective execution of the liquidation of Respondent.

Reinsurance

22. Pursuant to C.R.S. § 10-3-531, the amount recoverable by the Liquidator from reinsurers shall not be reduced as a result of this delinquency proceeding regardless of any contrary provisions in the reinsurance contract or other agreements. Reinsurance in force shall be payable to the Liquidator on the basis of the contractual liability of Respondent without diminishment due to the insolvency of Respondent.

Jurisdiction and Venue

23. Pursuant to C.R.S. §§ 10-3-504 and 10-3-523, this Court has the sole and exclusive jurisdiction to entertain, hear or determine any proceeding or matter associated with or in any way affecting or impacting the liquidation of Respondent, its policyholders, creditors and the public.

Rights Fixed and Cancellation of Policies

24. Upon the entry of this Order, the rights and liabilities of Respondent and of its creditors, policyholders, shareholders, members, and all other persons interested in Respondent's estate shall become fixed, except as provided in C.R.S. §§ 10-3-518 and 10-3-536.

25. In accordance with C.R.S. § 10-3-518(1)(a), all of Respondent's policies in effect as of the date of this Order shall continue in force only until 12:01 a.m. on the date thirty days following the entry of this Order, and coverage under such policies shall thereon terminate. (the Policy Cancellation Date").

Notice of Liquidation Order and Claims Process

26. The Liquidator shall give notice, or cause to be given notice, of this Order as soon as possible by sending a copy of this Order, as follows:

- a. By first class mail to all of Respondent's insurance brokers and consultants;
- b. By first class mail to all persons known or reasonably expected to have claims against Respondent, including all policyholders and contract holders at their last known address as indicated by the records of Respondent;
- c. By publication in the Denver Post and the Rocky Mountain News;
- d. By first-class mail to those guaranty associations that may afford coverage for Respondent's contractual obligations and the departments of insurance in which Respondent transacts business.

Stay of Proceedings

27. Any court in this state before which any action or proceeding in which Respondent is a party, or is obligated to defend a party, shall stay the action or proceeding for a minimum of ninety (90) days and for such additional time as is necessary for the Liquidator to obtain proper representation and prepare for further proceedings.

Miscellaneous

28. The Liquidator shall be responsible on his official oath established pursuant to C.R.S. § 10-1-105, for the proper administration of all assets coming into his possession or control and the Court may at any time require an additional bond from his or any of his duly appointed deputies or representatives if deemed desirable for the protection of such assets.

29. Liquidator and any persons acting under its direction, including all directors, officers, employees, agents or representatives and any other person, shall, upon presentation of a copy of this Order, deliver to the Liquidator or his Special Deputies or representatives, any and all properties of Respondent, real or personal, in its possession or under its control and all persons are enjoined from in any way disturbing the possession of the Liquidator.

So Ordered this 31 day of July, 2005.


DISTRICT COURT JUDGE