

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

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

Plaintiffs,

v.

LUMBERMENS MUTUAL CASUALTY COMPANY,
an Illinois domestic property and casualty mutual
company, and AMERICAN MANUFACTURERS
MUTUAL INSURANCE COMPANY, an Illinois
domestic property and casualty mutual company,

Defendants.

NO.:

12CH24227

AGREED ORDER OF REHABILITATION

THIS CAUSE COMING TO BE HEARD upon the 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") and American Manufacturers Mutual Insurance Company ("American Manufacturers") 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. Sufficient cause exists for the entry of an order for rehabilitation of the Defendant, Lumbermens, including that the entirety of the Board of Directors of Lumbermens has approved a resolution consenting to the entry of an order placing Lumbermens into rehabilitation pursuant to the provisions of Article XIII; and

B. Sufficient cause exists for the entry of an order for rehabilitation of the Defendant, American Manufacturers, including that the entirety of the Board of Directors of American Manufacturers has approved a resolution consenting to the entry of an order placing American Manufacturers into rehabilitation pursuant to the provisions of Article XIII; and

C. Pursuant to Section 191 of the Code, 215 ILCS 5/191, this order creates an estate comprising of all of the liabilities and assets of Lumbermens; and

D. Pursuant to Section 191 of the Code, 215 ILCS 5/191, this order creates an estate comprising of all of the liabilities and assets of American Manufacturers; and

E. Upon the entry of the Order prayed for herein, 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 Lumbermens and American Manufacturers; 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 Lumbermens and American Manufacturers; 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 Lumbermens and American

Manufacturers 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 Lumbermens and American Manufacturers; 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 Lumbermens and American Manufacturers in his name, as Director, and that the Rehabilitator is authorized to deal with the property, business and affairs of Lumbermens and American Manufacturers in the name of Lumbermens and American Manufacturers; 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 Lumbermens and American Manufacturers, or any part thereof, and to sell or compromise all debts or claims owing to Lumbermens and American Manufacturers 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 either Lumbermens or American Manufacturers having a value in excess of Twenty-Five Thousand (\$25,000.00) Dollars, and sale or compromise of debts owing to Lumbermens or American Manufacturers by the Rehabilitator where the debt owing to Lumbermens or American Manufacturers 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 Lumbermens and American Manufacturers including, but not limited to, prosecuting any action, claim, suit, or proceeding on behalf of the policyholders, claimants, beneficiaries or creditors of Lumbermens and American Manufacturers; 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 the rehabilitation order prayed for herein or within such further time as applicable law permits, institute an action, claim, suit, or proceeding upon any cause of action against which the period of limitation fixed by applicable law had not expired as of the filing of the complaint upon which 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 respective assets of Lumbermens and American Manufacturers, all administrative expenses incurred during the course of the rehabilitation of Lumbermens and American Manufacturers; 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 Lumbermens and American Manufacturers 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).

F. This Order of Rehabilitation affirming Andrew Boron, Director of Insurance of the State of Illinois, and his successors in office as Rehabilitator of Lumbermens and American Manufacturers is an interlocutory appealable order as of right pursuant to Illinois Supreme Court Rule 307.

G. A series of agreed corrective orders was entered into beginning February 10, 2003 under the authority of Sections 186.1 of the Code, 215 ILCS 5/186.1 (collectively, the "Corrective Orders"). Following the loss of its A- rating from A.M. Best Company, Inc. and, following extensive discussions with the Illinois Department of Insurance (the "Department") and pursuant to the terms of the Corrective Orders, Lumbermens commenced a voluntary run-off in 2003 and, since 2004, has been operating under a run-off plan filed with the Department on March 19, 2004 and approved June 9, 2004, together with annual updates to the Run-Off Plan (collectively, the "Run-Off Plan"). The procedures and proceedings arising from the Corrective Orders and Run-off Plan have been in effect and Lumbermens has been operating under such

Corrective Orders and Run-Off Plan, and Lumbermens has continuously operated under the oversight of the Department as outlined in the Corrective Orders and the Run-Off Plan, since March 26, 2003 and June 9, 2004, respectively.

H. Pursuant to the terms of the Corrective Orders, American Manufacturers also commenced a voluntary run-off in 2003 and, since 2004, has been operating under the "Run-Off Plan." The procedures and proceedings arising from the Corrective Orders and Run-off Plan have been in effect and American Manufacturers has been operating under such Corrective Orders and Run-Off Plan, and American Manufacturers has continuously operated under the oversight of the Department as outlined in the Corrective Orders and the Run-Off Plan, since March 26, 2003 and June 9, 2004, respectively.

I. Specifically, pursuant to Corrective Order 03-2003, the Director has overseen the Lumbermens' and American Manufacturers' runoffs through the requirement for Lumbermens and American Manufacturers to submit comprehensive weekly, monthly and quarterly periodic reports to the Director, the Director's required approvals for material transactions, biweekly calls to update the Department on events and transactions at Lumbermens and American Manufacturers, periodic in person meetings with the Director and/or his staff, and the Director's or a Department designee's attendance at all Lumbermens and American Manufacturers Board of Directors meetings since 2003, as well as other requirements. In addition, a representative of RSM McGladrey LLP, now known as Risk & Regulatory Consulting, LLC ("McGladrey" or "RRC"), acting at the Department's request, has been provided an on-site location at Lumbermens and American Manufacturers since March 2003 and has attended, either in person or by telephone, every Board of Directors meeting of Lumbermens and American Manufacturers since 2003. Since the inception of the run-off, the Department has issued over 500 separate

written directions or approvals to Lumbermens and American Manufacturers on specific transactional or operational matters pertaining to the run-off.

J. Pursuant to Agreed Corrective Order 01-2003, dated February 10, 2003 and Agreed Corrective Order 02-2003, dated March 5, 2003, the Director engaged advisors that assisted the Department in overseeing the run-off, namely Milliman, Inc., an actuarial and consulting firm and American Express Tax & Business Services, later renamed McGladrey, and then renamed RRC, a public accounting, tax and consulting firm, respectively; Milliman and McGladrey/RCC have been retained continuously since 2003. Pursuant to Agreed Corrective Order 01-2003, Milliman has conducted annual reserve reviews on Lumbermens and American Manufacturers for years-end 2002 through 2010.

K. Since the inception of the run-off, the Department, with the assistance of McGladrey/RRC, completed statutory financial examinations of Lumbermens and American Manufacturers through December 31, 2005 and through December 31, 2010.

L. KPMG, LLP, a public accounting firm, has provided annual audits of the Lumbermens and American Manufacturers statutory financial statements and reports on the system of internal controls both since the inception of the run-off and for considerable years before.

M. In addition to the oversight of the Director and the Department, Lumbermens and American Manufacturers have reported to the National Association of Insurance Commissioners ("NAIC") Lumbermens' Working Group. The NAIC Working Group is composed of representatives from the following state insurance departments: Illinois, California, New York, Texas, Pennsylvania, Florida, Massachusetts and New Jersey, states comprising a large majority of the business previously written by Lumbermens and American Manufacturers. This reporting

has included in-person presentations and written reports to the NAIC Working Group at each NAIC meeting since June 2004.

N. Furthermore, periodic in-person presentations and written reports with respect to Lumbermens and/or American Manufacturers have been provided to the National Conference of Insurance Guaranty Funds (“NCIGF”) Lumbermens’ Working Group since June 2004.

O. During the involvement of the Department, its advisors and consultants, and other state regulators and representatives of state guaranty funds in the oversight of the Lumbermens’ and American Manufacturers’ runoff, no negligent act, error or omission by the Board of Directors or management of Lumbermens or American Manufacturers was identified for the time period of January 2003 through June 26, 2012.

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

Q. The Department has received and reviewed numerous reports that evaluated the causes for the runoff, and evaluated the conduct of the run-off, of Lumbermens and American Manufacturers, 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.

R. The reports listed in Paragraph Q, above, did not identify actionable negligent acts, errors or omissions by the pre-January, 2003 members of the Board of Directors or management of Lumbermens or American Manufacturers.

S. 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 Lumbermens or American Manufacturers 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 Lumbermens or American Manufacturers as of the date of this 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 Lumbermens and American Manufacturers prior to January 1, 2003, and the passage of over eight years of runoff, the Director, in filing this verified complaint for rehabilitation, has found no basis for additional investigations against such members of the Board of Directors or management of Lumbermens or American Manufacturers.

It Is Hereby Ordered That:

1. The Order of Rehabilitation prayed for herein is entered as, to and against Lumbermens and American Manufacturers.

2. 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 Lumbermens' and American Manufacturers' Run-Off Plan dated

March 19, 2004 and approved June 9, 2004, as updated annually, and the proceedings arising from the foregoing, are terminated.

3. There being no just reason for delaying enforcement or appeal of the order prayed for herein, the Order of Rehabilitation is a final order within the meaning of Illinois Supreme Court Rule 307(a)(5).

4. Andrew Boron, Director of Insurance of the State of Illinois, and his successors in office, is affirmed as the statutory Rehabilitator (the "Rehabilitator") of Lumbermens and American Manufacturers, with all of the powers appurtenant thereto.

5. All treaties, contracts and agreements of reinsurance, wherein Lumbermens or American Manufacturers 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 Lumbermens or American Manufacturers 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 American Manufacturers was the ceding company and Lumbermens was the assuming company, or under which a direct or indirect subsidiary 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.

6. 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 Lumbermens and American Manufacturers, and their 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 Lumbermens and American Manufacturers, and of the premises occupied by them for the transaction of their business, and to marshal and liquidate the assets, business and affairs of Lumbermens and American Manufacturers 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 Lumbermens and American Manufacturers, 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 Lumbermens and American Manufacturers; and

B. The Rehabilitator may both sue and defend on behalf of Lumbermens and American Manufacturers, or for the benefit of the policyholders, claimants and other creditors of Lumbermens and American Manufacturers, in the courts either in his name as the Rehabilitator of Lumbermens and American Manufacturers, or in the name of Lumbermens and American Manufacturers, as the case may be.

7. 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 Lumbermens and American Manufacturers, and that all reinsurance companies involved with Lumbermens and American Manufacturers are restrained and enjoined from making any settlements with any claimant or policyholder of Lumbermens and American Manufacturers, 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 Lumbermens or American Manufacturers.

8. 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 Lumbermens or American Manufacturers than any other policyholder, claimant, member, third party or creditor in the same class.

9. 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
AND AMERICAN MANUFACTURERS MUTUAL
INSURANCE COMPANY"**

10. All costs of the proceedings prayed for herein shall be taxed and assessed against the Defendants, Lumbermens and American Manufacturers.

11. The Rehabilitator may, in his sole discretion, retain some or all of the staff in the Lumbermens and/or American Manufacturers Lake Zurich facility.

12. 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 Lumbermens and/or American Manufacturers.

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

14. 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 Lumbermens and American

Manufacturers 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 Lumbermens and American Manufacturers, and to provide the Rehabilitator with such information as he may require concerning any and all business and/or professional relationships between them and Lumbermens and American Manufacturers, and concerning any and all activities, projects, jobs and the like undertaken and/or performed by them at the request of Lumbermens and American Manufacturers, or their agents, servants, officers, directors and/or employees, or which Lumbermens and American Manufacturers may be, or are, entitled to as the result of their relationship with such accountants, auditors and attorneys; and

B. Lumbermens and American Manufacturers and their 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 Lumbermens and American Manufacturers, and all premises occupied by Lumbermens and American Manufacturers for the transaction of their business; and

C. Lumbermens and American Manufacturers and their 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 Lumbermens and American Manufacturers, 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 Lumbermens and American Manufacturers,

until the further order of this Court; and

D. The officers, directors, agents, servants, representatives and employees of Lumbermens and American Manufacturers, 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 Lumbermens and American Manufacturers, or their property or assets, or the Director or Rehabilitator, except insofar as those claims, actions or proceedings arise in or are brought in the rehabilitation proceedings prayed for herein; 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 Lumbermens and American Manufacturers, or their 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 Lumbermens and American Manufacturers, 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 Lumbermens and American Manufacturers, 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 Lumbermens and American Manufacturers, and such banks, brokerage houses, financial institutions, companies, persons or entities having

done business, or doing business, with Lumbermens and American Manufacturers, or having in their possession assets which are, or may be, the property of Lumbermens and American Manufacturers, 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 Lumbermens and American Manufacturers arising under either contracts, policies of insurance, certificates of insurance, or agreement, contracts, treaties or certificates of reinsurance issued by Lumbermens and American Manufacturers, are restrained and enjoined from making any settlements with any claimant or policyholder of Lumbermens and American Manufacturers, 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 Lumbermens or American Manufacturers' insured by the reinsurer.

15. The Court retains jurisdiction in this cause for the purpose of granting such other and further relief as the nature of this cause and the interests of Lumbermens and American Manufacturers, their policyholders, beneficiaries, members and creditors, or of the public, may require and/or as the Court may deem proper in the premises.

ENTERED:

JUDGE RITA M. NOVAK

JUL 02 2012 ✓

Circuit Court-1741

Judge Presiding

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