

BEFORE JAMES A. DODRILL, INSURANCE COMMISSIONER
OF THE STATE OF WEST VIRGINIA

FILED

In the Matter of:

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AMERICAN SERVICE INSURANCE COMPANY, INC. (NAIC #42897)

OFFICE WEST VIRGINIA
SECRETARY OF STATE

Administrative Proceeding No. 20-FINCON-02004

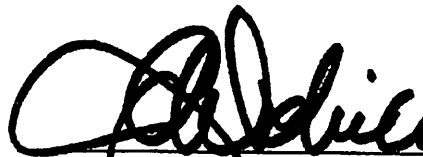
FINAL ORDER

The undersigned, Insurance Commissioner of the State of West Virginia, does hereby adopt and approve the Recommended Decision of the Hearing Examiner, appended hereto, as well as the findings and facts and conclusions of law therein contained. It is consequently **ORDERED** that the Administrative Complaint against American Service Insurance Company, Inc., be upheld and that the Certificate of Authority of American Service Insurance Company, Inc. be **REVOKED**.

American Service Insurance Company, Inc., is further assessed and **ORDERED** to pay the costs of the hearing in the amount of one thousand one hundred eighty-seven and 50/100 dollars (\$1,187.50).

The objections of any party aggrieved by this Order and to the Recommended Decision herein adopted are preserved.

ENTERED this 7th day of June, 2021.



JAMES A. DODRILL
Insurance Commissioner

BEFORE JAMES A. DODRILL, INSURANCE COMMISSIONER
OF THE STATE OF WEST VIRGINIA

In the Matter of

AMERICAN SERVICE INSURANCE COMPANY, INC.

Administrative Proceeding No.: 20-FINCON-02004

**RECOMMENDED DECISION
OF THE HEARING EXAMINER**

On March 1, 2021, a hearing was held before Hearing Examiner Mark W. Carbone, Esquire, at the Offices of the Insurance Commissioner. American Service Insurance Company (hereinafter, Respondent) did not make an appearance. Gregory A. Elam, Esquire, and Justin Parr, Chief Financial Analyst appeared on behalf of West Virginia Offices of the Insurance Commissioner (hereinafter "WVOIC").

Based upon a thorough review of the entire record in this case, the undersigned now makes the following Findings of Fact and Conclusions of Law.

Statement of the Case

A Complaint to revoke its Certificate of Authority was filed against the Respondent alleging that the Respondent had been placed in receivership and that it had a deficit surplus, a net underwriting loss, and a net loss, thus violating . W.Va. Code § 33-34-3A .

Findings of Fact

1. The Respondent is organized and headquartered in Schaumburg, Illinois and is a licensed insurance company in the State of West Virginia (42897 NAIC). The Respondent is authorized to transact marine insurance, casualty insurance and surety insurance in the state of West

Virginia.

2. The Respondent's statutory home office address is at 953 American Lane, 3rd floor, Schaumburg Illinois 60173. The Respondent's mailing address of the Illinois Office of the Special Deputy Receiver, Attn. Kevin Baldwin, 222 Merchandise Mart Plaza, Suite 960, Chicago, Illinois 60654.

3. The Respondent obtained a Certificate of Authority from the WVOIC on September 4, 2004.

4. As Chief Financial Analyst for the WVOIC, Jason Parr, determines whether an insurance company's overall financial condition meets the licensing requirements of the State of West Virginia. Mr. Parr testified that, based on the information available to him, the Respondent's financial condition no longer met the minimum requirements for a licensed insurance company in the state of West Virginia. (Tr. P. 7)

5. According to the Respondent's financial statements, as of December 31, 2018, it had a net underwriting loss of \$3,249,045 and a net income loss of \$992,317.

6. Mr. Parr stated that the first clear indication that the Respondent was in serious financial distress was as of June 30, 2019. At that point the Respondent's financial statements indicated that there was an underwriting loss of \$85,866,983 and a net income loss of \$86,394,566.00. (Tr. P. 8; Ex. C)

7. On July 8, 2019, the Circuit Court of Cook County, Illinois, entered an Agreed Order of Rehabilitation against the Respondent. This action was brought, by a verified complaint, filed by the Director of the Illinois Department of Insurance. Following the entry of this Order the rehabilitation proceedings began. The Director of the Illinois Department of Insurance was named the Rehabilitator of the Respondent. Shortly after this Order was entered, the West Virginia Offices

of the Insurance Commissioner received notice of the current status of the Respondent. (Tr. P. 9; Ex. D)

8. On August 11, 2019, the Circuit Court of Cook County, Illinois, entered an Agreed Order of Liquidation With a Finding of Insolvency. The Court found that sufficient cause existed to put the Respondent into liquidation. The Court ordered that the Respondent's property, business and affairs be liquidated. The Order was entered due to the fact that the Respondent was insolvent. (Ex. E)

9. Mr. Parr testified that, based on the Respondent's financial statement dated December 31, 2019, the Respondent was showing a negative balance for surplus of \$61,447,774.00. According to Mr. Parr, the negative balance indicated that the Respondent was insolvent. (Tr. P. 7-8; Ex. C)

10. The West Virginia Offices of the Insurance Commissioner received the agreed order of liquidation with a finding of insolvency on August 11, 2020. (Tr. P. 10; Ex. E)

11. The West Virginia Offices of the Insurance Commissioner filed a Complaint to Revoke the Certificate of Authority of the Respondent. The Illinois Office of the Special Deputy Receiver, Attn J. Kevin Baldwin, was sent a copy of the Complaint and the Notice of Hearing by certified mail. (Ex. A.)

12. The hearing occurred as scheduled in the Notice of Hearing, however, no one representing the Respondent made an appearance at the hearing.

Issue

Whether the Respondent no longer meets West Virginia licensing requirements and if not, should the Respondent's Certificate of Authority be suspended or revoked.

Burden of Proof

The West Virginia Offices of the Insurance Commissioner has the burden of proof

to prove, by a preponderance of the evidence, that the Respondent violated the insurance laws of the State of West Virginia.

Jurisdiction

The West Virginia Offices of the Insurance Commissioner has jurisdiction over this Complaint under West Virginia Code § 33-2-3.

Analysis

The WVOIC has filed a complaint alleging that the Respondent no longer meets the requirements for licensing due to a deficiency of assets and that the continued operation of the Respondent will be hazardous to the policyholders, creditors or the general public.

The WVOIC's complaint states that when the Respondent went into liquidation the WVOIC had the right under W.Va. Code § 33-34-3A to determine whether the Respondent can continue to operate in West Virginia. W.Va. Code § 33-34-3A states as follows:

§33-34-3a. Standards to determine hazardous condition; commissioner's authority.

(a) Standards. -- In making a determination pursuant to subdivision (1), subsection (a), section three of this chapter as to whether the continued operation of an insurer transacting an insurance business in this state might be deemed to be hazardous to the public, to its insureds or to its creditors, the commissioner may consider the following standards either singly or in combination:

(1) Adverse findings reported in financial condition and market conduct examination reports, audit reports and actuarial opinions, reports or summaries;

(2) The National Association of Insurance Commissioners' insurance regulatory information system and its other financial analysis solvency tools and reports;

(3) Whether the insurer has made adequate provision, according to presently accepted actuarial standards of practice, for the anticipated cash flows required by the contractual obligations and related expenses of the insurer, when considered in light of the assets held by the insurer with respect to such reserves and related actuarial items including, but not limited to, the investment earnings on such assets and the considerations anticipated to be received and retained under such policies and contracts;

(4) The ability of an assuming reinsurer to perform and whether the insurer's reinsurance program provides sufficient protection for the insurer's remaining surplus, after taking into account the insurer's cash flow and the classes of business written as well as the financial condition of the assuming reinsurer;

(5) Whether the insurer's operating loss in the last twelve-month period or any shorter period of time, including but not limited to net capital gain or loss, change in nonadmitted assets and cash dividends paid to shareholders, is greater than fifty percent of such insurer's remaining surplus as regards policyholders in excess of the minimum required;

(6) Whether the insurer's operating loss in the last twelve-month period or any shorter period of time, excluding net capital gains, is greater than twenty percent of the insurer's remaining surplus as regards policyholders in excess of the minimum required;

(7) Whether a reinsurer, obligor or any entity within the insurer's insurance holding company system is insolvent, threatened with insolvency or delinquent in payment of its monetary or other obligations and which in the opinion of the commissioner may affect the solvency of the insurer;

(8) Contingent liabilities, pledges or guaranties which either individually or collectively involve a total amount which in the opinion of the commissioner may affect the solvency of the insurer;

(9) Whether any controlling person of an insurer is delinquent in the transmitting to, or payment of, net premiums to such insurer;

(10) The age and collectability of receivables;

(11) Whether the management of an insurer, including officers, directors or any other person who directly or indirectly controls the operation of such insurer, fails to possess and demonstrate the competence, fitness and reputation deemed necessary to serve the insurer in such position;

(12) Whether management of an insurer has failed to respond to inquiries relative to the condition of the insurer or has furnished false and misleading information concerning an inquiry;

(13) Whether the insurer has failed to meet financial and holding company filing requirements in the absence of a reason satisfactory to the commissioner;

(14) Whether management of an insurer has filed any false or misleading sworn financial statement, released a false or misleading financial statement to lending institutions or to the general public, or made a false or misleading entry or omitted an entry of material amount in the books of the insurer;

(15) Whether the insurer has grown so rapidly and to such an extent that it lacks adequate financial and administrative capacity to meet its obligations in a timely manner;

(16) Whether the insurer has experienced or will experience in the foreseeable future cash flow or liquidity problems;

(17) Whether management has established reserves that do not comply with minimum standards established by this chapter or the rules promulgated thereunder, statutory accounting standards, sound actuarial principles and standards of practice;

(18) Whether management persistently engages in material under-reserving that results in adverse development;

(19) Whether transactions among affiliates, subsidiaries or controlling persons for which the insurer receives assets or capital gains, or both, do not provide sufficient value, liquidity or diversity to assure the insurer's ability to meet its outstanding obligations as they mature; and

(20) Any other finding determined by the commissioner to be hazardous to the insurer's insureds, creditors or the general public.

After reviewing the statute and the evidence produced at the hearing, it appears that the Respondent had at least violated sections 1, 16, and 17 of the statute. The statute only requires one of these sections to be violated to prove that the Respondent's continuing operation is a danger to the public.

The evidence was that the Respondent's financial condition no longer met the minimum requirements for a licensed insurance company in the state of West Virginia. The Respondent's financial statement dated December 31, 2019, indicated that the Respondent was showing a negative balance for surplus of \$61,447,774.00. This is an adverse finding of the financial condition of the Respondent. By proving the adverse financial condition, the WVOIC proved that the Respondent violated W.Va. Code § 33-34-3A(a)(1).

The Respondent was put into receivership on July 8, 2019. The fact that the Respondent was put into receivership indicates that the Respondent is in violation of W.Va. Code § 33-34-3A (a)(16). If the Respondent was not projected to have a positive future cash flow, it would not have been placed into receivership.

The evidence was that on August 11, 2019, the Insurance Director of the Illinois Department of Insurance and the Respondent agreed to an Order liquidating the Respondent. Since the Respondent agreed to be liquidated, that proves that the Respondent had insufficient reserves to comply with the requirements found in W.Va. Code § 33-34-3A(a)(17).

The WVOIC proved that the Respondent was in violation of W.Va. Code § 33-34-3A (a)(1), (16) and (17). One violation is sufficient to allow the WVOIC to revoke the Respondent's license to conduct insurance business in the State of West Virginia under West Virginia Code § 33-3-11, which in relative parts states as follows:

§33-3-11. Discretionary refusal, revocation or suspension;

(a) The commissioner may after notice and hearing refuse to renew, or may revoke or suspend the license of an insurer, in addition to other grounds therefor in this chapter, if the insurer:

(4) Is found by the commissioner to be in an unsound condition or in such condition as to render its further transaction of insurance in West Virginia hazardous to its policyholders or to the people of West Virginia;

By proving that the Respondent fell below the standards found in W.Va. Code § 33-34-3A, the WVOIC is authorized to revoke the Respondent's Certificate of Authorization.

Conclusions of Law

The following are made as conclusions of law:

1. The West Virginia Offices of the Insurance Commissioner has the burden to prove, by a preponderance of the evidence, that the Respondent violated the insurance laws of West Virginia.
2. West Virginia Code § 33-34-3A sets out the standards to determine whether an insurance company is in a hazardous financial condition.

3. The West Virginia Offices of the Insurance Commissioner proved, by a preponderance of the evidence, that the Respondent was in a financially hazardous condition under West Virginia Code § 33-24-3A(a)(1) by proving that the Respondent's own audited financial statement had a negative surplus budget balance.

4. Under West Virginia Code § 33-24-3A(a)(16), the West Virginia Insurance Commissioner proved that the Respondents financial condition is hazardous by proving, by a preponderance of the evidence, that the Respondent went into receivership which indicated a negative future surplus.

5. Under West Virginia Code § 33-24-3A(a)(17), the West Virginia Insurance Commissioner proved that the Respondents financial condition is hazardous by proving, by a preponderance of the evidence, that the Respondent agreed to an Order of Liquidation thus proving that it did not have sufficient reserves.

6. The West Virginia Insurance Commissioner is authorized under West Virginia Code § 33-3-11 to revoke the Respondent's Certificate of Authority when the Respondent violated West Virginia Code § 33-24-3A(a)(1), (16) and (17).

Recommended Decision

It is recommended that the West Virginia Offices of the Insurance Commissioner proved, by a preponderance of the evidence, that the Respondent fell below the standards as outlined in West Virginia Code § 33-24-3A. Due to falling below the standards contained in West Virginia Code § 33-24-3A, the Insurance Commissioner is authorized to revoke the Respondent's Certificate of Authority. Therefore, under West Virginia Code § 33-3-11, the Respondent's Certificate of Authority should be revoked and the Respondent be assessed the costs of this proceeding.

Respectfully recommended,

A handwritten signature in blue ink, appearing to read "Mark W. Carbone", written over a horizontal line.

MARK W. CARBONE
HEARING EXAMINER

Date: May 5, 2021