

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

AT RICHMOND, JULY 28, 2014

COMMONWEALTH OF VIRGINIA, *ex rel.*

STATE CORPORATION COMMISSION

v.

CASE NO. INS-2011-00239

SOUTHERN TITLE INSURANCE
CORPORATION, in Receivership,

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ORDER OF LIQUIDATION WITH A FINDING OF INSOLVENCY

On October 4, 2013, Jacqueline K. Cunningham, as Deputy Receiver ("Deputy Receiver") of Southern Title Insurance Corporation ("Southern Title" or "Company"), filed with the State Corporation Commission ("Commission") her application ("Application") for the Commission's entry of an Order of Liquidation declaring Southern Title to be insolvent, approving the proposed claims filing deadline, authorizing use of the unearned premium reserve ("UPR") in accordance with § 38.2-4613 of the Code of Virginia ("Code"), and addressing all related matters.

On October 18, 2013 the Commission entered a scheduling order ("Scheduling Order") that (i) set a hearing ("Liquidation Hearing") on the Deputy Receiver's proposed liquidation of Southern Title; (ii) established response dates for those persons wishing to oppose the Application; (iii) approved notice procedures for the Liquidation Hearing and other receivership proceedings, and (iv) appointed a Hearing Examiner to conduct all further proceedings in this matter.¹

The notice procedures required that the Deputy Receiver provide direct written notice of the Liquidation Hearing to all creditors, claimants, and policyholders for whom Southern Title's

¹ Doc. Con. Cen. No. 131050066.

records provided a valid mailing address, and publish notice of the Liquidation Hearing one day a week for two consecutive weeks in publications specified in a schedule of publications attached to the Application. In addition, the Deputy Receiver was authorized to use electronic mail to provide notice to any claimant, creditor, or policyholder for whom Southern Title maintains a valid electronic mail address.

The Liquidation Hearing was held before the Senior Hearing Examiner on May 13, 2014. Joseph West, Esquire, and Michael P. Marcin, Esquire, appeared on behalf of the Deputy Receiver. John O. Cox, Esquire, appeared on behalf of the Commission's Bureau of Insurance ("Bureau"). The Deputy Receiver presented her case for liquidation of Southern Title through four witnesses: (i) Susan E. Roehm, Director of Information Services for Palomar Financial; (ii) Donald Beatty, Esquire, Senior Counsel in the Commission's Office of General Counsel; (iii) Joel Vaag, Principal for Oliver Wyman Actuarial Consultants ; and (iv) Clark Thomson, CPA, Managing Partner for Calhoun, Thomson & Matza, LLP.

Ms. Roehm testified, among other things, that her firm was hired by the Deputy Receiver to handle accounting and various other tasks for the receivership including providing notice to all creditors, claimants, and policyholders for whom Southern Title's records provide valid mailing addresses. Ms. Roehm also testified as to the Deputy Receiver's compliance with the notice requirements of the Scheduling Order.²

Mr. Beatty testified that he is the Special Deputy Receiver for Southern Title and that as such he is responsible for the day to day operation of the Company.³ Mr. Beatty testified that according to Southern Title's December 31, 2012, audited financial statement, the Company was

² Roehm, Tr. at 8-12.

³ Beatty, Tr. at 14.

insolvent by \$30,438,982.⁴ Mr. Beatty also testified that as of December 31, 2013, Southern Title's liabilities exceeded its assets by \$25,446,699⁵ and that it was unable to pay its obligations.⁶ Mr. Beatty contended that efforts to rehabilitate the Company would be futile due to deep insolvency.⁷ In addition, Mr. Beatty noted that the Deputy Receiver issued a request for proposals seeking a purchaser of the Company, or reinsurance, or any other possible arrangements and that no proposals were received.⁸ Because further efforts to rehabilitate the Company would be futile, Mr. Beatty recommended that Southern Title be liquidated.⁹

Mr. Beatty advised that the UPR is a reserve established by § 38.2-4610.1 of the Code for the protection of policyholders.¹⁰ Mr. Beatty testified that as of December 20, 2011, the date that the Company was placed into receivership, the UPR was \$9,974,279.¹¹ Mr. Beatty testified that § 38.2-4613 C of the Code provides that the UPR may be used for (i) the payment of expenses of administration of a receivership; (ii) policyholder claims filed before the claims filing deadline; and (iii) if there are any remaining funds, claims filed after the claims filing deadline but within twenty years of the deadline.¹²

⁴ *Id.* at 16-17; Exhibit No. 3.

⁵ Beatty, Tr. at 17; Exhibit No. 4.

⁶ Beatty, Tr. at 17-18.

⁷ *Id.* at 18.

⁸ *Id.* at 19.

⁹ *Id.*

¹⁰ *Id.* at 20.

¹¹ *Id.* at 21; Exhibit No. 5.

¹² Beatty, Tr. at 24.

Mr. Vaag testified as to his duties as the appointed actuary to Southern Title since 2012.¹³ Mr. Vaag testified that he was engaged, in part, to provide an estimate of the unpaid loss and loss adjustment expense for Southern Title.¹⁴ Mr. Vaag testified that as of December 31, 2013, the range of unpaid loss and loss adjustment expense liabilities, net of reinsurance, was \$33,547,000 to \$40,009,000, with a central estimate of \$36,778,000.¹⁵

Finally, Mr. Thomson testified that his firm was engaged to audit the statutory basis financial statements for the year ended December 31, 2012.¹⁶ Mr. Thomson affirmed that as of December 31, 2012, Southern Title was insolvent by \$30,438,982.¹⁷ He opined that the Company cannot fulfill its obligations in the normal course of business.¹⁸

On June 12, 2014, the Senior Hearing Examiner issued his Report ("Report") which summarized the factual and procedural history of this case, as well as the evidence and arguments presented at the Liquidation Hearing. In his Report, the Senior Hearing Examiner found that the Deputy Receiver had provided notice to claimants, creditors, and policyholders as directed in the Scheduling Order. The Senior Hearing Examiner also found that, based on the evidence presented during the Liquidation Hearing, Southern Title is insolvent as liabilities far exceed assets, and the Company is unable to pay its obligations as they become due in the ordinary course of business. Based on the Company's insolvency, and its failed efforts to locate either a purchaser or reinsurance, the Senior Hearing Examiner found that further efforts to

¹³ Vaag, Tr. at 34.

¹⁴ *Id.* at 35.

¹⁵ *Id.* at 36; Exhibit No. 8.

¹⁶ Thomson, Tr. at 39-40.

¹⁷ *Id.* at 40; Exhibit No. 11.

¹⁸ Thomson, Tr. at 41.

rehabilitate Southern Title would be futile.¹⁹ He found that the Commission should grant the Deputy Receiver's Application and enter a liquidation order as requested by the Deputy Receiver.²⁰ He recommended that the Commission enter an order adopting his findings and dismissing the case.²¹

The Report allowed the parties 21 days to provide comments. No comments were filed.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that the Senior Hearing Examiner's findings and recommendations are reasonable and should be adopted except that we will keep this case open pending resolution of the receivership.

Accordingly, IT IS ORDERED THAT:

- (1) The Deputy Receiver's Application is hereby GRANTED.
- (2) Southern Title is hereby found and declared to be INSOLVENT, as that term is defined in § 38.2-1501 of the Code.
- (3) Further efforts to rehabilitate Southern Title would be futile, and the Company should be liquidated.
- (4) The Deputy Receiver is hereby directed to proceed with the LIQUIDATION of Southern Title in accordance with the provisions of Title 38.2, Chapter 15 of the Code, other applicable Virginia law, and the orders of the Commission, and all subject to the further orders of the Commission.
- (5) The Deputy Receiver is hereby AUTHORIZED to use assets equal to the value of the UPR on December 20, 2011 (\$9,974,279), to enter into contracts of reinsurance to pay all

¹⁹ Report at 6.

²⁰ *Id.* at 9.

²¹ *Id.*

policyholder claims, or if no such contracts of reinsurance are effected, to be distributed according to the order of preference in § 38.2-4613 C of the Code, and to report its Statutory Premium Reserve liability as \$9,974,279, less any distribution or payment made in accordance with § 38.2-4613 of the Code;

(6) The Claims Filing Deadline is hereby established at six (6) months following the date entry of this Order, applicable to all claims against Southern Title other than Pending Claims and Administrative Claims, all as more fully described in the Application;

(7) The Deputy Receiver is hereby AUTHORIZED to:

- i. Promulgate reasonable requirements for the method of presentment and for perfecting claims including, but not limited to, the following: that all claims be rendered certain, liquidated, and non-contingent within a reasonable time following initial presentment but no more than one year following expiration of the Claims Filing Deadline;
- ii. Continue managing the affairs of Southern Title until such time as it is liquidated and dissolved;
- iii. Maintain a reasonable reserve of both UPR and non-UPR assets for the costs and expenses of administration;
- iv. Allocate the costs and expenses of administration between UPR and non-UPR assets in the proportion those assets bear to the value of all estate assets;
- v. Allocate the costs and expenses of paying claims pursuant to §§ 38.2-1509 B 1 (ii) and 38.2-4613 C (ii) of the Code between UPR and non-UPR assets in the proportion those assets bear to the value of all estate assets;
- vi. After reserving for the costs and expenses of administration, pursuant to §§ 38.2-1509 B 1 and 38.2-1510 of the Code, including the costs of curative actions taken to resolve title defects that, left uncured, might give rise to claims under insurance policies issued by Southern Title, adjudicate and pay out non-UPR designated funds according to the following priorities:
 1. The claims of all secured creditors with a perfected security interest not voidable under § 38.2-1513 of the Code to the extent of the value of their security;
 2. The claims of the associations for "covered claims" and "contractual obligations," as defined in § 38.2-1603 of the Code and in other applicable

- comparable statutes in other jurisdictions, and the claims of other policyholders arising out of insurance contracts apportioned without preference, such payments to be made from Southern Title assets in accordance with a Commission order or directive of the Deputy Receiver setting the payment percentage;
3. Taxes owed to the United States and other debts owed to any person, including the United States, which by the laws of the United States are entitled to priority;
 4. Claims for wages entitled to priority as provided in § 38.2-1514 of the Code;
 5. On a *pro rata* basis, claims of all other creditors; and
 6. That portion of all Late Filed Claims, as described in the Application, scheduled to be paid from non-UPR fund sources.
- vii. Adjudicate and pay out UPR designated funds in the following order of preference:
1. All expenses incurred under § 38.2-4613 of the Code in connection with the receivership and rehabilitation proceedings, including the costs of curative actions taken to resolve title defects that, left uncured, might give rise to claims under insurance policies issued by Southern Title;
 2. Policyholder claims for losses filed before the Claims Filing Deadline apportioned without preference, such payments to be made from Southern Title assets in accordance with a Commission order or directive of the Deputy Receiver setting the payment percentage; and
 3. Policyholder claims for losses that were filed after the Claims Filing Deadline, as they are allowed until such time as no funds remain or until December 20, 2031, whichever is earlier.
- viii. Transfer UPR assets that remain unpaid or undistributed after December 20, 2031, if any, to the non-UPR accounts of Southern Title to be administered as non-UPR designated funds;
- ix. In the event that she cannot find any person owed funds by the Company, deliver such unclaimed funds to the custody of the state of that person's last known address, as shown by the Company's books and records, pursuant to the procedures established by that state's unclaimed property laws;
- x. Create a trust to hold any unclaimed funds if the applicable state unclaimed property laws did not permit her to deliver any such unclaimed funds to the relevant states prior to the date that Southern Title would cease to exist and the receivership would terminate;

- x. Cause a third party or contractor of the Company to assume remaining obligations and contingencies of Southern Title in exchange for reasonable consideration, and be authorized to obtain an independent opinion from an actuarial or accounting firm regarding the reasonableness of consideration paid for the assumption of Southern Title obligations or contingencies; and
- xii. Take all steps necessary and appropriate to liquidate and dissolve Southern Title as soon as reasonably practicable.

(8) The rights, interests, and contingent claims of all policyholders, and creditors of the Company are hereby fixed as of the date of the entry of this Order;

(9) The Deputy Receiver is hereby authorized, in her reasonable discretion, to issue a directive extending the Claims Filing Deadline for a period no greater than one (1) year;

(10) The termination and closure of these receivership proceedings upon application of the Deputy Receiver, at the completion of the liquidation, for the Commission's order terminating these proceedings is hereby approved; and

(11) This matter is continued.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to all persons on the official Service List in this matter. The Service List is available from the Clerk of the State Corporation Commission, c/o Document Control Center, 1300 East Main Street, First Floor, Tyler Building, Richmond, Virginia 23219.