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November 30, 2010

VIA E-FILING

The Honorable Joel H. Peck, Clerk
State Corporation Commission
Tyler Building - 1st Floor
1300 East Main Street
Richmond, Virginia 23219

ATTN.: DOCUMENT CONTROL CENTER

Re: Commonwealth of Virginia ex rel. State Corporation Commission v. Reciprocal of America and The Reciprocal Group Re: Confidential Settlement Agreements; Case No. INS-2010-00251; Our File No. 65000-105

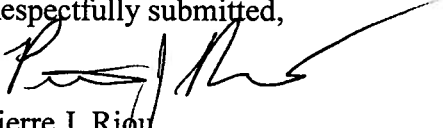
Dear Mr. Peck:

On behalf of Alfred W. Gross, Deputy Receiver of Reciprocal of America and The Reciprocal Group, please find enclosed for e-filing the following:

Application for Orders Setting Contingent Hearing, Approving Procedures, Establishing Response Date, and Approving Deputy Receiver's Settlements with Certain Former Officers, Directors, and Outside Counsel of Reciprocal of America and The Reciprocal Group

Thank you for your kind assistance in regard to this matter. Please let us know if you have any questions.

Respectfully submitted,


Pierre J. Riou
Counsel to the Deputy Receiver

PJR:dkd

Enclosures

cc: All Parties of Record

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION
AT RICHMOND

COMMONWEALTH OF VIRGINIA *ex rel.*
STATE CORPORATION COMMISSION,

Applicant,

v.

CASE NO. INS-2010-00251

RECIPROCAL OF AMERICA and
THE RECIPROCAL GROUP,

Respondents.

Re: Confidential Settlement Agreements

**APPLICATION FOR ORDERS SETTING CONTINGENT HEARING,
APPROVING PROCEDURES, ESTABLISHING RESPONSE DATE,
AND APPROVING DEPUTY RECEIVER'S SETTLEMENTS
WITH CERTAIN FORMER OFFICERS, DIRECTORS, AND OUTSIDE COUNSEL
OF RECIPROCAL OF AMERICA AND THE RECIPROCAL GROUP**

TO THE HONORABLE JUDGES OF THE COMMISSION:

Alfred W. Gross, Commissioner of Insurance, Bureau of Insurance, State Corporation Commission of the Commonwealth of Virginia (the "Commission"), in his capacity as Deputy Receiver (the "Deputy Receiver") of Reciprocal of America ("ROA") and The Reciprocal Group ("TRG) (collectively, the "Companies"), in receivership, having recently entered into two separate settlements subject to the Commission's approval, respectfully submits this application (the "Application") for the Commission's entry of: (1) an order setting a contingent hearing, to be held only in the event that written objection to the Application is timely filed, approving procedures, and establishing response date; and (2) a final order approving without hearing if no hearing is required, or approving after hearing if one is required: (a) a confidential mediated settlement among the

Deputy Receiver and the plaintiffs in other civil actions pending as part of *In Re Reciprocal of America (ROA) Sales Practices Litigation*, Multidistrict Litigation Docket No. 1551 (W.D. Tenn.) (“MDL-1551”), and MDL-1551 defendants John William Crews (“Crews”), Gordon D. McLean (“McLean”), Kenneth R. Patterson (“Patterson”), Carolyn B. Hudgins (“Hudgins”), Judith A. Kelley (“Kelley”), Richard W. E. Bland (“Bland”), Crews & Hancock, P.L.C. (“Crews & Hancock”), William G. Sugg (“Sugg”) and Gerald R. Wages (“Wages”),¹ as well as Great American Insurance Company, Executive Liability Division (“Great American ELD”), and Great American Insurance Company, Professional Liability Division (“Great American PLD”) (the “D&O Settlement”), effectuated by a confidential mediated settlement agreement among those parties (the “D&O Settlement Agreement”);² and (b) a settlement of claims between the Deputy Receiver and Ronald

¹ The Deputy Receiver did not assert claims against Sugg or Wages, who were named as defendants by certain other MDL-1551 plaintiffs.

² The other MDL-1551 plaintiffs who are parties to the D&O Settlement Agreement are the plaintiffs in MDL-1551 actions *Leslie A. Newman v. General Reinsurance Corporation, et al.*, Civil Action No. 07-CV-1112, W.D. Tenn., *Leslie A. Newman v. General Reinsurance Corporation, et al.*, Civil Action No. 07-CV-1113, W.D. Tenn., and *Leslie A. Newman v. General Reinsurance Corporation, et al.*, Civil Action No. 07-CV-1114, W.D. Tenn. (collectively, the “Tennessee Liquidator Actions”); *Crenshaw Community Hospital, et al. v. General Reinsurance Corporation, et al.*, Civil Action No. 03-CV-2696, W.D. Tenn., *Gateway Regional Health System, Inc., et al. v. General Reinsurance Corporation, et al.*, Civil Action No. 04-CV-2936, W.D. Tenn., *Delta Regional Medical Center, et al. v. General Reinsurance Corporation, et al.*, Civil Action No. 06-CV-2155, W.D. Tenn., and *Appalachian Regional Healthcare, Inc., et al. v. General Reinsurance Corporation, et al.*, Civil Action No. 06-CV-2676, W.D. Tenn. (collectively, the “Hospital Actions”); *David Herrick, et al. v. General Reinsurance Corporation, et al.*, Civil Action No. 03-CV-2705, W.D. Tenn., *Schumacher Group, Inc. v. General Reinsurance Corporation, et al.*, Civil Action No. 04-CV-2410, W.D. Tenn., and *Christie Clinic, P.C. v. General Reinsurance Corporation, et al.*, Civil Action No. 03-CV-2859, W.D. Tenn. (collectively, the “Doctor/Clinic Actions”); and *Missouri Hospital Plan, et al. v. Doctors Insurance Reciprocal, et al.*, Civil Action No. 04-CV-2294, W.D. Tenn. (the “MHP Action”).

K. Davis, M.D. (“Davis”) (the “Davis Settlement”),³ effectuated by a confidential settlement agreement between them (the “Davis Settlement Agreement”).⁴ In support of this Application, the Deputy Receiver would show the Commission as follows:

BACKGROUND

1. On January 29, 2003, in Cause No. CH03-135 styled *Commonwealth of Virginia ex rel. State Corporation Commission v. Reciprocal of America, The Reciprocal Group, and Jody M. Wagner, Treasurer of Virginia*, the Circuit Court of the City of Richmond, Virginia entered its Final Order Appointing Receiver for Rehabilitation or Liquidation (the “Receivership Order”), appointing the State Corporation Commission of the Commonwealth of Virginia (the “Commission”) permanent Receiver of the Companies. The Receivership Order also appointed Alfred W. Gross, the Commissioner of the Commission’s Bureau of Insurance, as Deputy Receiver of the Companies.

2. Pursuant to the terms of the Receivership Order, the Deputy Receiver has been authorized, *inter alia*, to institute and prosecute in his name or in the name of the Companies any and

³ The Deputy Receiver is the only MDL-1551 plaintiff who named Davis as a defendant.

⁴ Under Virginia law, the parties may agree in writing, as they have done in the D&O Settlement Agreement, that a written confidential mediated agreement signed by the parties shall be confidential. VA. CODE ANN. § 8.01-581.22. As such, the D&O Settlement Agreement, and the terms thereof, are not subject to disclosure in discovery or in any judicial or administrative proceeding except to the extent that the parties to each of those agreements have agreed, in writing, to permit disclosure. *Id.* The parties to the D&O Settlement Agreement have agreed, in writing, to permit solely the disclosures made herein.

The Deputy Receiver and Davis have agreed to permit the disclosure of solely those terms of the confidential Davis Settlement Agreement made herein.

Pursuant to Commission Rule 5-20-170 and concurrently with the filing of this Application, the Deputy Receiver is filing a motion for protective order relating to the D&O Settlement Agreement and the Davis Settlement Agreement.

all suits and other legal proceedings including, but not limited to, the prosecution of any action which may exist on behalf of the Companies and their subscribers, members, insureds, policyholders, or creditors. In addition, the Receivership Order granted the Deputy Receiver the power to compromise such suits, legal proceedings, or claims on such terms and conditions as may be deemed appropriate.

3. On June 20, 2003, the Commission ordered that, *inter alia*, ROA and TRG be found and declared to be insolvent, and that the Deputy Receiver proceed with the liquidation of ROA and TRG in accordance with the provisions of Title 38.2, Chapter 15, of the Virginia Code, other applicable Virginia law, and the Orders of the Commission, subject to further orders of the Commission.

4. On November 12, 2003, as authorized by the Receivership Order, the Deputy Receiver instituted legal proceedings styled *Alfred W. Gross v. General Reinsurance Corporation, et al.*, Cause No. 3:03cv955, in the United States District Court for the Eastern District of Virginia, which the United States Judicial Panel on Multidistrict Litigation subsequently transferred to the United States District Court for the Western District of Tennessee for pre-trial proceedings as part of MDL-1551, where the case is now pending as Cause No. 04-CV-2313 (the "ROA Lawsuit").

5. In the ROA Lawsuit, the Deputy Receiver alleges tort, contract, and statutory claims against, *inter alia*, Crews, McLean, Patterson, Hudgins, Kelley, Bland, Davis, and Crews & Hancock, as well as against a number of other defendants who are neither parties to, nor intended

third-party beneficiaries of, the D&O Settlement or the Davis Settlement, but with whom the Deputy Receiver previously entered into settlements subject to certain conditions precedent.⁵

6. Crews, McLean, Patterson, Hudgins, Kelley, Bland, Davis, and Crews & Hancock deny that they violated any duty or duties owed to ROA or TRG, or to anyone else or in any way pertaining to any matters alleged or which could have been alleged in the ROA Lawsuit. Neither the D&O Settlement nor the Davis Settlement implies any wrongful or actionable conduct on the part of Crews, McLean, Patterson, Hudgins, Kelley, Bland, Davis, or Crews & Hancock, who specifically deny any such wrongful conduct alleged or claimed.

7. Together with the ROA Lawsuit, MDL-1551 coordinates for pre-trial proceedings several other ROA-related civil suits, originally filed in several United States district courts (or originally filed in state courts and removed to federal courts), all including as defendants various combinations of Crews, McLean, Patterson, Hudgins, Kelley, Bland, and Crews & Hancock, among others, including Wages and Sugg.⁶

8. Crews, McLean, Patterson, Hudgins, Kelley, Bland, and Davis were among the additional insureds under Great American ELD Policy Number DOL 7506822, a directors and officers liability policy issued to TRG prior to the receivership (the “ELD Policy”). Great American ELD filed suit to rescind the ELD Policy in *Great American Insurance Co. v. Alfred Gross, et. al.*,

⁵ The Commission approved of those settlements by order dated January 7, 2010, in Case No. INS-2009-00212.

⁶ *See supra*, notes 1 and 3.

Civil Action No. 3:05CV159, E.D. Va. (the “Rescission Action”), which remains pending. The court in that case denied cross-motions for summary judgment and has scheduled a trial for April 18, 2011.

9. Both the D&O Settlement Agreement and the Davis Settlement Agreement are subject to certain conditions precedent, including the Commission’s approval sought by this Application.

10. Effective upon consummation of the D&O Settlement Agreement, the Deputy Receiver would release Crews, McLean, Patterson, Hudgins, Kelley, Bland, Crews & Hancock, Great American ELD (in its capacity as issuer of the ELD Policy, of which TRG was the policyholder and Crews, Patterson, McLean, Hudgins, Kelley, Wages, and Sugg were among the additional insureds), Great American PLD (in its capacity as issuer of PLD Policy Number LPL 543116600, of which Crews & Hancock, Crews, and Bland were among the insureds),⁷ and all other persons and entities in the capacity or capacities in which one or more of them may be an insured under the Policies, from all claims and potential claims belonging to the Companies for the benefit of the Companies’ policyholders, insureds, and other creditors, as well as all claims and potential claims that he is authorized to assert on behalf of subscribers, members, insureds, policyholders, or creditors of the Companies because they are common to them and result from the insolvency of the

⁷ The Great American ELD Policy and Great American PLD Policy Number Number LPL 543116600 are referred to herein, collectively, as “the Policies.”

Companies, or are derivative claims, in that they involve injury to policyholders and creditors only insofar as the underlying conduct violated some legal duty to ROA, thereby decreasing the assets of the estate to which policyholders and creditors must look for satisfaction of their debts, and which claims arise out of, or by reason of, or in any manner connected with the subject matter of, alleged in or giving rise to, the ROA receivership, the TRG receivership, the Doctors Insurance Reciprocal receivership, the American National Lawyers Insurance Reciprocal receivership, The Reciprocal Alliance receivership, the ROA Lawsuit, the Tennessee Liquidator Actions, the Hospital Actions, the Doctor/Clinic Actions, the MHP Action, or the Policies (collectively, the “D&O Released Claims”). In the D&O Settlement, the Deputy Receiver does not purport to release, and as a matter of law he *could not* release even if he purported to, any personal claims of policyholders, insureds, or creditors. *See In re Liquidation of Am. Mut. Liab. Ins. Co.*, 632 N.E.2d 1209, 1214 (Mass. 1994) (“It appears the distinction between common claims, which a receiver has exclusive authority to settle on behalf of policyholders and creditors, and personal claims, which a receiver cannot settle, is a basic one. Without the exclusive right in the receiver to settle common claims, resulting litigation could be endless.”).

11. Effective upon consummation of the Davis Settlement Agreement, the Deputy Receiver would release Davis and Great American ELD (in its capacity as issuer of ELD Policy Number DOL 7506822, of which TRG was the policyholder and Davis was among the additional insureds) from all claims and potential claims belonging to the Companies for the benefit of the

Companies' policyholders, insureds, and other creditors, as well as from all claims and potential claims that he is authorized to assert on behalf of subscribers, members, insureds, policyholders, or creditors of the Companies because they are common to them and result from the insolvency of the Companies, or are derivative claims, in that they involve injury to policyholders and creditors only insofar as the underlying conduct violated some legal duty to ROA, thereby decreasing the assets of the estate to which policyholders and creditors must look for satisfaction of their debts (collectively, the "Davis Released Claims"). In the Davis Settlement, the Deputy Receiver does not purport to release, and as a matter of law he *could not* release even if he purported to, any personal claims of policyholders, insureds, or creditors. *See id.*

12. The Deputy Receiver has exclusive standing to prosecute and compromise the Released D&O Claims and the Released Davis Claims, and policyholders and insureds may only prosecute in their own name claims belonging to them personally. *See id.*

13. Settlement negotiations and the mediation of the settled claims, and the process of drafting of the D&O Settlement Agreement and the Davis Settlement Agreement in forms satisfactory to the respective settling parties and insurers, proved lengthy and challenging due to a number of factors, including: (a) the complexity of the insurance, reinsurance, retrocession, accounting, auditing, actuarial, legal, and factual issues involved in the ROA Lawsuit and related litigation; (b) the large number of MDL-1551 plaintiffs with disparate interests and overlapping

claims against many of the same defendants; (c) the large number of defendants exposed to potential liability for those overlapping claims; and (d) the pending Rescission Action.

14. After extensive discovery, heated litigation, and intense, good faith negotiations and mediation over more than seven years, and after careful consideration, the Deputy Receiver has determined that it is in the best interests of the policyholders and creditors of ROA and TRG that he compromise and settle all claims between himself and the settling parties pursuant to the terms of the D&O Settlement Agreement and the Davis Settlement Agreement, which he asserts are fair and reasonable to policyholders and creditors.

15. Subject to the satisfaction of the conditions precedent of the D&O Settlement Agreement and the Davis Settlement Agreement, the settling defendants would, collectively, pay \$2,290,000 to the Deputy Receiver, and the Deputy Receiver would, in addition to releasing the claims and potential claims described above, dismiss with prejudice all of his claims pending against Crews, McLean, Patterson, Hudgins, Kelley, Bland, Crews & Hancock, and Davis in the ROA Lawsuit. In addition, the ROA Deputy Receiver, the RRG Liquidator and Great American ELD, jointly, would move for dismissal with prejudice of the Rescission Action.

**REQUEST FOR APPROVAL OF THE D&O SETTLEMENT
AND THE DAVIS SETTLEMENT**

16. Consummation of the D&O Settlement and the Davis Settlement is essential to the Deputy Receiver's successful administration of the receivership, including increases in the percentage payment on policyholder claims or, *potentially*, if the settlements approved by the

Commission's January 7, 2010, order are consummated, payments on general creditor claims. If all conditions precedent to the D&O Settlement and the Davis Settlement are satisfied, including the Commission's approval, this would result in an aggregate cash payment to the receivership estate of \$2,290,000.

17. Perhaps as importantly, if this Application is approved and the D&O Settlement, the Davis Settlement, and previously approved settlements are all consummated, that would completely terminate the ROA Lawsuit, subject to any appeals of the Commission's orders, any filings and/or orders required in the federal court, and any appeals from said orders of the federal court. Termination of the ROA Lawsuit would save the receivership estate the expense of continuing to litigate the ROA Lawsuit and would hasten closure of the receivership.

18. Therefore, the Deputy Receiver requests: (a) that the Commission find that both the D&O Settlement and the Davis Settlement are fair and reasonable to, and in the best interests of, ROA's policyholders and ROA's and TRG's creditors; (b) that the Commission approve the D&O Settlement and the Davis Settlement; and (c) that the Commission approve of the Deputy Receiver entering into both the D&O Settlement Agreement and the Davis Settlement Agreement according to their terms.

**REQUEST FOR FINDING THAT THE DEPUTY RECEIVER HAS
EXCLUSIVE STANDING TO COMPROMISE THE SETTLED CLAIMS**

19. The Deputy Receiver respectfully requests that the Commission find that the Deputy Receiver has exclusive standing to assert and compromise the D&O Released Claims and the Davis Released Claims, including those pending in the ROA Lawsuit.

PROPOSED CONTINGENT HEARING, NOTICE, AND RESPONSE DATE

20. The Deputy Receiver requests that the Commission schedule a hearing for the consideration of the foregoing, such hearing to be held only in the event that written objection to this Application is filed with the Commission pursuant to the procedures and schedule proposed below (the "Contingent Hearing").

21. Because the Commission's approval is necessary to, and would expedite consummation of, the D&O Settlement and the Davis Settlement, which would provide substantial benefits to the estates of insolvent ROA and TRG, reduce the costs to the estates of continuing litigation against the settling defendants, and expedite the process of liquidating ROA and TRG, the Deputy Receiver requests that the Commission schedule the requested Contingent Hearing at the earliest possible date.

22. The Deputy Receiver proposes to publish notice of the Contingent Hearing, beginning no later than forty-five (45) days before the scheduled date thereof, including a summary, and instructions on how to obtain a copy, of the Application and the Commission's order setting the Contingent Hearing. Such notice would be published for at least one day each week for two

consecutive weeks in the *Richmond Times-Dispatch*, *The Wall Street Journal*, and *USA Today*. The Deputy Receiver would also post on the Companies' web site (www.reciprocalgroup.com), no later than forty-five (45) days before the scheduled date of the Contingent Hearing, copies of the Application and the Commission's order setting the Contingent Hearing.

23. The Deputy Receiver requests that any party who objects to the relief sought by the Application be required to present such objection at the Contingent Hearing and to file with the Commission, and simultaneously serve upon the Deputy Receiver and all other parties of record no later than twenty-one (21) days before the scheduled date of the Contingent Hearing, a Notice of Objection, which shall contain: (i) a precise statement of the interest of the respondent; (ii) a statement of the specific relief sought, to the extent then known; and (iii) the factual and legal basis for the relief sought.

24. The Deputy Receiver requests that service of all documents upon him be required to be directed to his counsel, Patrick H. Cantilo at 11401 Century Oaks Terrace, Suite 300, Austin, Texas 78758, and also be required to be provided to said counsel on the day of filing by electronic mail to service@cb-firm.com.

25. The Deputy Receiver requests that, in the event that no person timely files a Notice of Objection, the Commission approve both the D&O Settlement and the Davis Settlement without holding the Contingent Hearing.

WHEREFORE, PREMISES CONSIDERED, the Deputy Receiver respectfully requests that the Commission enter:

1. An order:
 - a. Setting a contingent hearing on the Application's request for Commission approval of the D&O Settlement and the Davis Settlement, such hearing to be held only in the event that written objection to this Application is filed with the Commission pursuant to the procedures and schedule provided by the order;
 - b. Approving forty-five (45) days' notice of the hearing by publication as proposed in this Application; and
 - c. Directing all persons who expect to appear at the hearing for the purpose of opposing the relief requested by this Application to file with the Commission, and simultaneously serve upon the Deputy Receiver and all other parties of record, no later than twenty-one (21) days before the scheduled date of the contingent hearing, a Notice of Objection, which shall contain: (i) a precise statement of the interest of the respondent; (ii) a statement of the specific relief sought, to the extent then known; and (iii) the factual and legal basis for the relief sought.

2. Following the contingent hearing (or after the deadline for filing Notices of Objection, if none are filed), a final order:

- a. Finding that the Deputy Receiver has exclusive standing to assert and compromise the D&O Released Claims and the Davis Released Claims, including those pending in the ROA Lawsuit;
- b. Finding that both the D&O Settlement and the Davis Settlement are fair and reasonable to, and in the best interests of, ROA's policyholders and ROA's and TRG's creditors;
- c. Approving the D&O Settlement and the Davis Settlement; and

- d. Approving of the Deputy Receiver entering into the D&O Settlement Agreement and the Davis Settlement Agreement according to their terms.

Respectfully submitted,

Alfred W. Gross, Commissioner of Insurance, State Corporation Commission, Bureau of Insurance, as Deputy Receiver of Reciprocal of America and The Reciprocal Group

By: s/ Pierre J. Riou
Pierre J. Riou

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CERTIFICATE OF SERVICE

I hereby certify that on November 30, 2010, the foregoing document was filed electronically with the Clerk of the Commission and one copy was sent via overnight delivery to:

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APPLICATION FOR ORDERS SETTING CONTINGENT HEARING, APPROVING PROCEDURES, ESTABLISHING RESPONSE DATE, AND APPROVING DEPUTY RECEIVER'S SETTLEMENTS WITH CERTAIN FORMER OFFICERS, DIRECTORS, AND OUTSIDE COUNSEL OF RECIPROCAL OF AMERICA AND THE RECIPROCAL GROUP

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APPLICATION FOR ORDERS SETTING CONTINGENT HEARING, APPROVING PROCEDURES, ESTABLISHING RESPONSE DATE, AND APPROVING DEPUTY RECEIVER'S SETTLEMENTS WITH CERTAIN FORMER OFFICERS, DIRECTORS, AND OUTSIDE COUNSEL OF RECIPROCAL OF AMERICA AND THE RECIPROCAL GROUP

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APPLICATION FOR ORDERS SETTING CONTINGENT HEARING, APPROVING
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