

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

AT RICHMOND, JUNE 23, 2017

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COMMONWEALTH OF VIRGINIA, *ex rel.*

STATE CORPORATION COMMISSION,
Applicant

v.

CASE NO. INS-2017-00155

RECIPROCAL OF AMERICA
and
THE RECIPROCAL GROUP,
Respondents

SCHEDULING ORDER

On June 16, 2017, Jacqueline K. Cunningham, Commissioner for the State Corporation Commission's ("Commission") Bureau of Insurance, in her capacity as Deputy Receiver of Reciprocal of America ("ROA") and The Reciprocal Group ("TRG") (collectively, "Companies"), in receivership for liquidation, submitted her Application for Final Order Approving Various Wind-Down Matters ("Application") and for an order approving notice procedures, establishing response procedures, and setting a contingent hearing ("Contingent Hearing") on the Application, to be held only in the event that written objections to the Application are timely filed.

In her Application, the Deputy Receiver is seeking a Final Order (i) ratifying the Deputy Receiver's compromise of claims asserted in the TRG estate by the Pension Benefit Guaranty Corporation; (ii) ratifying the Deputy Receiver's commutation of a certain settlement trust agreement with General Reinsurance Corporation; (iii) ratifying the Deputy Receiver's compromise of claims asserted by the Companies in the liquidation of certain Tennessee risk retention groups; (iv) ratifying the record retention schedule attached to the Application, subject

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to any requirement to retain for a longer period any records relevant to pending or anticipated litigation; (v) ratifying the conduct and wind down of the receivership by the Deputy Receiver, her predecessor and their deputies, counsel, and consultants heretofore; (vi) approving the Deputy Receiver's establishment of a reserve of \$500,000 for TRG's final expenses and contingencies; (vii) approving the Deputy Receiver's establishment of a reserve of \$10,000,000 for ROA's final expenses and contingencies; (viii) approving the Deputy Receiver's execution, after the payment of all approved claims of the Companies (subject to the reserves for the Companies' respective wind-down costs, expenses, and contingencies), of an agreement to establish a liquidating trust for the purposes set forth in the Application; (ix) approving the distribution of the Companies' assets in the manner proposed in the Application; and (x) authorizing the Deputy Receiver to file notice and a report with the Commission, along with a recommendation that this receivership proceeding be closed, after the purposes of the liquidating trust and the receivership have been accomplished, any remaining assets in the liquidating trust have been distributed, and the liquidating trust has terminated.

In support of her Motion, the Deputy Receiver stated that on January 29, 2003, the Circuit Court of the City of Richmond entered its Final Order Appointing Receiver for Rehabilitation or Liquidation in Cause No. CH03000135-00¹ that appointed the Commission as Receiver and Alfred W. Gross as Deputy Receiver ("Deputy Receiver") of the Companies.² On June 20, 2003, in Case No. INS-2003-00024, the Commission entered its Order of Liquidation with a Finding of Insolvency and Directing the Cancellation of Direct Insurance Policies which,

¹ This and other documents related to the Companies' receivership may be found at: <http://www.reciprocalgroup.com/documents.htm>.

² The Commission subsequently entered an Order appointing Jacqueline K. Cunningham as Deputy Receiver of the Reciprocal Companies. *Commonwealth of Virginia ex rel. State Corporation Commission v. Reciprocal of America and The Reciprocal Group*, Case No. INS-2003-00024, 2011 S.C.C. Ann. Rept. 71, Order Appointing Jacqueline K. Cunningham as Deputy Receiver for Rehabilitation or Liquidation (Jan. 10, 2011).

inter alia, declared the Companies to be insolvent and directed the Deputy Receiver to proceed with the liquidation of the Companies.³ On October 28, 2003, in Case No. INS-2003-00024, the Commission entered its Order Setting Final Bar Date and Granting Deputy Receiver Continuing Authority to Liquidate Companies, setting September 30, 2004, as the Final Bar Date.⁴ The Companies have been in receivership for 12 years, and the Final Bar Date for claims expired over ten years ago (except with respect to 145 persons with known claims, as to whom the Additional Claims Period expired in late 2011).⁵

NOW THE COMMISSION, upon consideration of this matter, is of the opinion that a Contingent Hearing on the Application should be set.

Accordingly, IT IS ORDERED THAT:

(1) In accordance with § 12.1-31 of the Code and 5 VAC 5-20-120 of the Commission's Rules of Practice and Procedure, 5 VAC 5-20-10 *et seq.*, a Hearing Examiner hereby is appointed, on behalf of the Commission, to conduct any Contingent Hearing that may be held in this matter.

³ *Commonwealth of Virginia ex rel. State Corporation Commission v. Reciprocal of America and The Reciprocal Group*, Case No. INS-2003-00024, 2003 S.C.C. Ann. Rept. 116, Order of Liquidation with a Finding of Insolvency and Directing the Cancellation of Direct Insurance Policies (June 20, 2003).

⁴ *Commonwealth of Virginia ex rel. State Corporation Commission v. Reciprocal of America and The Reciprocal Group*, Case No. INS-2003-00024, 2003 S.C.C. Ann. Rept. 117, Order Setting Final Bar Date and Granting Deputy Receiver Continuing Authority to Liquidate Companies (Oct. 28, 2003) (hereinafter, "Order Setting Final Bar Date"). The Commission's Order provided that: "[c]laims subject to, and not received by, the Deputy Receiver on or before the Final Bar Date shall not be paid until all approved timely filed claims and all approved late claims of a higher priority are paid in full. Claims must be received at [ROA's Proof of Claim Department] on or before the Final Bar Date."

⁵ Order Setting Final Bar Date at ¶ 3. The Commission's Order provides that: "[t]he Commission will set a Claims Liquidation Date upon motion of the Deputy Receiver a reasonable time prior to the closure of the receivership. Notice of such motion shall be provided to all parties of record and all interested parties and a hearing thereon will be set by the Commission if so requested. Any and all claims shall have been submitted properly and rendered non-contingent and liquidated by the Claims Liquidation Date, or the claims will be permanently barred from sharing in the assets of the estate."

(2) A Contingent Hearing to solely consider the relief requested in the Application is hereby set for October 4, 2017, at 10 a.m. in the Second Floor Courtroom of the State Corporation Commission, Tyler Building, 1300 East Main Street, Richmond, Virginia 23219.

(3) All persons opposing the relief requested by the Application shall file with the Commission, and simultaneously serve upon the Deputy Receiver and all other parties of record, a Notice of Objection no later than August 24, 2017. Each Notice of Objection shall contain: (i) a precise statement of the interest of the person, (ii) a statement of the specific relief sought to the extent then known, and (iii) the factual and legal basis for the objection.

(4) Each person filing a Notice of Objection shall be required to present their objections at the Contingent Hearing.

(5) All persons other than the Deputy Receiver who expect to appear at the Contingent Hearing in support of, or opposition to, the Application shall file with the Commission and simultaneously serve upon the Deputy Receiver, no later than September 5, 2017, the prepared testimony and exhibits of each witness expecting to present direct testimony in support of, or in opposition to, the Application.

(6) All Notices of Objection to the Application, and all other pleadings or related documents, shall be filed with the Commission electronically in the manner prescribed by the SCC Guidelines for Electronic Document Filing at <http://www.scc.virginia.gov/clk/efiling/Guidelines.aspx>, or by delivering the original and fifteen (15) copies to Joel H. Peck, Clerk of the Commission, c/o Document Control Center, P.O. Box 1197, Richmond, Virginia 23218.

(7) Service of all Notices of Objection and other documents upon the Deputy Receiver shall be directed to John O. Cox, Special Deputy Receiver, Office of General Counsel,

State Corporation Commission, 1300 East Main Street, Richmond, Virginia 23219, and to the Deputy Receiver's counsel, Patrick H. Cantilo, Cantilo & Bennett, L.L.P., 11401 Century Oaks Terrace, Suite 300, Austin, Texas 78758. Service also must be provided to counsel for the Deputy Receiver on the day of filing by electronic mail to service@cb-firm.com.

(8) In the event that no party files a Notice of Objection, the Contingent Hearing shall not be held, and the Commission may decide the matter without holding a hearing.

(9) These proceedings shall be subject to the Commission's Rules of Practice and Procedure, 5 VAC 5-20-10 *et seq.*, to the extent not modified by order of the Commission.

(10) On or before July 14, 2017, Counsel for the Deputy Receiver shall send a description of the material provisions of the Application, the Application's Exhibits, and the Scheduling Order, and instructions on how to view them on the Companies' website (or request copies), by first class United States mail to all persons with approved, non-contingent, and timely-liquidated claims against ROA, TRG, or TRG's subsidiaries that have not yet been paid; to all subscribers of ROA who had positive equity account balances with ROA as of December 31, 2002; and to all those who were current subscribers of ROA as of December 31, 2002, provided however, that Counsel for the Deputy Receiver need not cause notice to be mailed to a person if counsel reasonably believes that the last known address of that person is no longer valid. Counsel for the Deputy Receiver shall also provide such notice to the United States Department of Justice by the additional means of courier, electronic mail, or both.

(11) On or before July 14, 2017, Counsel for the Deputy Receiver also shall publish notice of the Application and this Scheduling Order for one day each week for two consecutive weeks in the Richmond Times-Dispatch, The Wall Street Journal, and USA Today. The publication notice shall be of a form reasonably calculated to provide sufficient notice to all

persons interested in the affairs of ROA, TRG, and TRG's subsidiaries who do not receive written notice of the Application and the Scheduling Order.

(12) The mailed and publication notices shall satisfy the requirements to provide notice of the Application and this Scheduling Order. Copies of the Application and this Scheduling Order also shall be posted on the receivership website at <http://www.reciprocalgroup.com/documents.htm>.

(13) On or before August 1, 2017, counsel for the Deputy Receiver shall provide proof of notice as required by Ordering Paragraphs (10) and (11) of this Scheduling Order.

(14) This case is continued.

Commissioner Jagdmann did not participate in this matter.

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.