

# CANTILO & BENNETT, L.L.P.

ATTORNEYS & COUNSELORS  
*A Texas Registered Limited Liability Partnership  
Comprised of Professional Corporations*

7501 North Capital of Texas Highway  
Building C, Suite 200  
Austin, Texas 78731  
www.cantilobennett.com

Telephone: (512) 478-6000

Facsimile: (512) 404-6550

April 30, 2003

## VIA HAND-DELIVERY

The Honorable Joel H. Peck, Clerk  
State Corporation Commission  
Tyler Building  
1300 E. Main Street  
Richmond, Virginia 23219

Re: Commonwealth of Virginia, ex rel. State Corporation Commission v.  
Reciprocal of America, The Reciprocal Group, In Receivership Case No.  
INS-2003-00024

Dear Mr. Peck:

On behalf of the Deputy Receiver of Reciprocal of America and The Reciprocal Group, enclosed for filing, with an electronic signature, please find the following:

- 1) An original and 15 copies of the Application For Orders Setting Hearing on Liquidation of Reciprocal of America and The Reciprocal Group, Establishing Response Dates, Ordering Liquidation, Approving Claims Bar Dates, and Related Matters; and
- 2) An additional copy for date-stamping and return to the waiting messenger.

An original signed copy will be forwarded to your attention via federal express delivery tomorrow morning.

APR 30 11 31 AM '03

DOCUMENT CONTROL

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

Respectfully submitted,

*Patrick H. Cantilo*

Patrick H. Cantilo  
Counsel to the Deputy Receiver

cc: Peter B. Smith, Esq.  
H. Lane Kneedler, Esq. (via facsimile transmission and regular mail)  
Leslie F. Shecter, Esq. (via Federal Express Overnight Mail)  
Graham J. Matherne, Esq. (via Federal Express Overnight Mail)  
Kathryn A. Stephenson, Esq. (via Federal Express Overnight Mail)  
F. Claiborne Johnston, Jr., Esq. (via facsimile transmission and regular mail)  
C. William Waechter, Jr., Esq. (via facsimile transmission and regular mail)

COMMONWEALTH OF VIRGINIA  
STATE CORPORATION COMMISSION

COMMONWEALTH OF VIRGINIA, ex rel. )  
STATE CORPORATION COMMISSION, )  
 )  
Applicant, )  
 )  
v. ) Case No. INS-2003-00024  
 )  
RECIPROCAL OF AMERICA and )  
THE RECIPROCAL GROUP, )  
 )  
Respondents. )

**APPLICATION FOR ORDERS SETTING HEARING ON  
LIQUIDATION OF RECIPROCAL OF AMERICA  
AND THE RECIPROCAL GROUP, ESTABLISHING RESPONSE  
DATES, ORDERING LIQUIDATION, APPROVING  
CLAIMS BAR DATES, AND RELATED MATTERS**

TO THE HONORABLE JUDGES OF THE COMMISSION:

Alfred W. Gross, as Deputy Receiver (the "Deputy Receiver") of Reciprocal of America ("ROA") and The Reciprocal Group ("TRG") (collectively, the "Companies"), pursuant to Va. Code Ann. § 38.2-1519 (Michie 2002)<sup>1</sup> and 5 VAC 5-20-80, respectfully makes this his Application for Orders Setting Hearing on Liquidation of Reciprocal of America and the Reciprocal Group, Establishing Response Dates, Ordering Liquidation, Approving Claims Bar Dates, and Related Matters (the "Application"), seeking that the Commission enter orders: (1) setting a hearing on the proposed liquidation of the Companies and certain related matters (the "Liquidation Hearing") and a further hearing on other relief sought herein by the Deputy Receiver and on any other matters raised by the Deputy Receiver in relation to this Application

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<sup>1</sup>All references herein are to the Virginia Code unless specified otherwise.

(the "Other Matters Hearing"); (2) establishing response dates for those persons wishing to oppose the Application; (3) approving notice procedures for the hearings; (4) after the Liquidation Hearing, declaring the Companies to be insolvent, entering an Order of Liquidation, permitting the payment of certain workers' compensation benefits, and authorizing the cancellation of ROA's direct insurance policies; and (5) after the Other Matters Hearing, approving the proposed claims bar dates and notice procedures related thereto, and all related matters for the Liquidation as described herein. In support of the Application, the Deputy Receiver would show the Commission the following:

### **I. BACKGROUND**

1. On January 29, 2003, pursuant to Title 38.2, Chapters 12 and 15 of the Virginia Code and other applicable Virginia law, the Circuit Court for the City of Richmond (the "Court") entered its Final Order Appointing Receiver for Rehabilitation or Liquidation (the "Receivership Order") which appointed the State Corporation Commission of the Commonwealth of Virginia (the "Commission") as Receiver (the "Receiver"), Alfred W. Gross, the Commissioner of Insurance of the Commonwealth of Virginia as Deputy Receiver (the "Deputy Receiver"), and Melvin J. Dillon as Special Deputy Receiver (the "Special Deputy Receiver"), and authorized and directed them to administer the business and affairs of the Companies and to do all acts necessary or appropriate for the rehabilitation or liquidation of the Companies.

2. In the Receivership Order, the Court found that ROA and TRG (as ROA's attorney-in-fact) were insurers for purposes of Title 38.2, Chapter 15, of the Virginia Code. The Court also found that ROA and TRG (as ROA's attorney-in-fact) were engaged in the business of issuing reciprocal insurance as reciprocal insurance is defined by Virginia Code § 38.2-1201,

entering into reinsurance agreements with respect to same, and were engaged in the business of insurance as defined by Virginia Code § 38.2-100.

3. In the Receivership Order, the Court found that ROA and TRG (as ROA's attorney-in-fact) were in a condition where any further transaction of business would be hazardous to the policyholders, creditors, members, subscribers, and the public.

4. As a result of the Receivership Order, the affairs and business of the Companies are administered by the Receiver, the Deputy Receiver, and the Special Deputy Receiver, who are vested, *inter alia*, with all the powers and authority expressed or implied under the provisions of Title 38.2, Chapters 12 and 15 of the Virginia Code.

5. Among the insurance policies issued by ROA were a substantial number of workers' compensation insurance policies. As a result of claims arising under such policies, ROA is currently making a number of medical and recurring partial or total disability payments (the "Disability Payments") to individuals entitled thereto under the workers' compensation insurance policies. The Deputy Receiver has been advised that total Disability Payments, net of recoveries, average approximately \$3,000,000 each month. Such payments, however, are generally essential to the daily sustenance of the recipients in this Commonwealth and in other states.

6. On or about the date of this Application, ROA is filing its Annual Financial Statement with the Bureau of Insurance, reflecting its financial condition as of December 31, 2002 (the "Annual Statement"). The Annual Statement reflects that, as of that date, ROA's liabilities exceeded its admitted assets by at least \$200 million. The Deputy Receiver has determined that the Companies' liabilities in all probability continue to exceed their admitted

assets by at least \$200 million and that they are unable to pay their obligations as they come due in the ordinary course of their business. The Deputy Receiver therefore submits that ROA and TRG are insolvent.

7. Pursuant to the Receivership Order and applicable Virginia law, the Deputy Receiver and Special Deputy Receiver have devoted their efforts to marshaling the assets and discharging the liabilities of the Companies. As management of the Companies' affairs in receivership progresses, the Deputy Receiver and Special Deputy Receiver have commenced the development of a plan of liquidation, the intent of which is to implement the orderly wind-down and dissolution of the Companies' affairs, with due regard to the interests of affected constituencies.

8. The Deputy Receiver has continued managing the affairs of the Companies with the principal intent of protecting their insureds and creditors. After commencement of the receivership, and based on the information then available, the Deputy Receiver had been advised by his consulting actuary and other advisors that, based on certain reasonable assumptions, he could continue to pay in full the claims of those insured under ROA insurance policies ("Direct Insureds"), without creating a danger that improper preferences would result from inability, as the receivership progressed, to pay in full the later claims of other Direct Insureds. Thus, prior to the date of this Application, the Deputy Receiver had caused ROA to pay covered claims of Direct Insureds in full as approved.

9. Thus far, the Deputy Receiver has not arranged for payment to general creditors, but he has made a preliminary estimate of the aggregate amount that is owed to them according to receivership records. Based on information for the period ending December 31, 2002, unpaid

general creditor liabilities total at least \$178 million.

10. There remains substantial uncertainty as to the aggregate amount of all claims that will be entitled to payment by the time that ROA's direct insurance coverages expire. However, the Deputy Receiver believes that there is a possibility that, after satisfaction of the costs and expenses of administration and all direct insured claims, ROA may retain assets sufficient to make partial payment of general creditor claims, including the claims of insurance companies under contracts of reinsurance with the Companies ("reinsureds"). As he continues the administration of the estate, the Deputy Receiver believes that it is important that plans be adopted and approved for the eventual disposition of all of the estate's affairs, including all assets and liabilities.

11. As a starting point, the Deputy Receiver articulates the fundamental goals underlying his analysis of how best to conclude this receivership. First, all creditors of the Companies must, to the extent possible, be paid in full in the order of priority promulgated in Va. Code § 38.2-1509 and the Commission's orders. Second, contingent and unsettled claims must be resolved and liquidated. Third, disputes arising from contested claims must be brought to final resolution. Fourth, adequate provision must be made for taxes and other such liabilities. Fifth, a determination must be made pursuant to Va. Code § 38.2-1519 as to whether further efforts to rehabilitate the Companies would be useless and liquidation should be sought.

12. The Deputy Receiver has developed and implemented measures to identify and resolve the claims of creditors in all the categories identified in § 38.2-1509. The contractual expiration dates of all direct insurance policies issued by ROA are no later than December 31, 2003. Thus, current receivership management protocols are expected to satisfy substantially the

first three goals identified in the preceding paragraph as early as year-end 2003, although the final resolution of all claims almost certainly will require additional time.

13. Identification and resolution of tax and similar actual and potential liabilities depends significantly on the nature and elements of the final wind-down plans. Until such plans are adopted, an effective program for resolving tax and similar liabilities cannot be implemented with sufficient certainty.

14. A determination as to whether further efforts to rehabilitate the insurer would be useless depends entirely on how rehabilitation is defined. Neither the applicable Virginia statutes nor the Receivership Order provide a definition by which such a determination can be gauged. However, pursuant to Va. Code Ann. § 38.2-1509(B)(1) and 38.2-1510, the Deputy Receiver believes that rehabilitation must include at least the following:

- a. payment of the costs and expenses of administration;
- b. payment of the claims of all secured creditors with a perfected security interest not voidable under Va. Code § 38.2-1513 to the extent of the value of their security;
- c. payment of the claims of the associations for “covered claims” and “contractual obligations” as defined in §§ 38.2-1603 and in applicable similar statutes, and the claims of other policyholders arising out of insurance contracts apportioned without preference;
- d. payment of 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;

- e. payment of wages entitled to priority as provided in Va. Code Ann. § 38.2-1514;
- f. payment in full of amounts due to other creditors;
- g. removal of the causes and conditions having given rise to the receivership;  
and
- h. ability of the Companies to continue as a viable business.

15. The Deputy Receiver does not believe that a plan for rehabilitation of the Companies can be designed and implemented that would satisfy at least the last three of these elements. The Companies' obligations under contracts of reinsurance, and their other general creditor claims, cannot be paid in full, although it is possible that partial payments may be made upon such claims on a *pro rata* basis.

16. For these reasons, the Deputy Receiver has concluded that further efforts at rehabilitation, however that term might reasonably be defined, would be useless. Accordingly, he has devoted attention to the development of a plan of liquidation and hereby seeks the Commission's approval for its implementation.

17. Because of ROA's deep insolvency, the Deputy Receiver believes that there is some question about his ability to continue making full payments on claims arising under ROA's direct insurance policies without creating a risk that unanticipated future adverse developments might make such full payments improbable for similarly situated claimants in the future.

18. The determination that ROA is insolvent, and the magnitude of that insolvency, have therefore caused the Deputy Receiver to conclude that it would be prudent to discontinue the further payment of claims asserted by Direct Insureds until such time as the Commission

enters its Order of Liquidation, with a finding of insolvency, and such payments can be resumed by insurance guaranty associations or in accordance with the Commission's Orders. Such an Order of Liquidation will make applicable the provisions of §38.2-1600 *et seq.*, and similar statutes in other jurisdictions, pursuant to which insurance guaranty associations will be required to pay "covered claims" of Direct Insureds, as defined in such statutes.

19. However, even pending further Orders of the Commission, the Deputy Receiver believes that he should continue making Disability Payments arising under workers' compensation insurance policies as described hereinabove until such time as such Disability Payments can be made by the guaranty associations. Therefore, the Deputy Receiver does not propose to interrupt the Disability Payments.

20. Years before it was placed in receivership, TRG contracted to provide certain services to Doctors Insurance Reciprocal, a Tennessee Risk Retention Group ("DIR"), American National Lawyers Insurance Reciprocal, a Tennessee Risk Retention Group ("ANLIR"), and The Reciprocal Alliance, a Tennessee Risk Retention Group ("TRA", collectively the "Tennessee Risk Retention Groups"). On January 31, 2003, Paula A. Flowers, Tennessee's Commissioner of Insurance, was appointed rehabilitator of the Tennessee Risk Retention Groups and a Special Deputy Receiver was appointed for each of the Tennessee Risk Retention Groups (the "Tennessee Special Deputy Receivers"). Copies of ROA's Annual Statement are being provided to the Tennessee Special Deputy Receivers.

21. On or about April 25, 2003, the Tennessee Special Deputy Receivers filed in the Commission their Joint Petition for Expedited Review of Claims and Deputy Receiver's Determination of Appeal (the "Joint Petition") and brief in support thereof. In the Joint Petition,

the Tennessee Special Deputy Receivers seek, *inter alia*, an order effectively requiring that the assets of ROA be used to pay claims of the Tennessee Risk Retention Groups' insureds at the same rate as those of ROA's Direct Insureds. This claim is made despite the fact that no assertion is made that the Tennessee Risk Retention Groups' insureds were ever led to believe that they had purchased insurance from ROA. Assertions are made by the Tennessee Risk Retention Groups regarding irregularities in the relationships between the Tennessee Risk Retention Groups and ROA, relationships that had been regulated and subjected to extensive examination by Tennessee insurance regulators. The Tennessee Risk Retention Groups also complain in the Joint Petition of TRG's possession of records related to the Tennessee Risk Retention Groups' business, despite the location of such records at TRG's offices having been expressly approved by Tennessee insurance regulators on at least three occasions, even to the point of special amendment to Tennessee law to permit such practice, such amendment reportedly having been supported by the Tennessee Department of Commerce and Insurance.

22. The Joint Petition is replete with unsubstantiated allegations and hyperbole, many creating internal inconsistencies, or inconsistencies with uncontroverted facts. Nonetheless, the Joint Petition also seeks an order effectively barring any further payment from ROA's assets to ROA's Direct Insureds until the Commission makes a determination as to whether they should be used as well to pay the claims of the Tennessee Risk Retention Groups' insureds. The Deputy Receiver believes that these allegations are wholly without merit.

23. Because the Deputy Receiver has independently concluded, as a result of ROA's deep insolvency, that he should discontinue claims payments (other than Disability Payments), he submits that no further order to this effect need be entered by the Commission. The Deputy

Receiver undertakes not to make any further such payments (other than Disability Payments), from and after the date this Application is filed, without an Order of the Commission approving such payment. The Deputy Receiver does not anticipate that the continuation of Disability Payments would be objectionable to the Tennessee Special Deputy Receivers because many of the recipients are Tennessee residents, as well as residents of other states. However, the Deputy Receiver does hereby inform the Commission that this undertaking is made principally because of ROA's deep insolvency, and not in response to the Joint Petition. The Deputy Receiver does not believe or concede that the Tennessee Special Deputy Receivers are entitled to the relief they seek. Indeed, he intends to contest fully the allegations of the Joint Petition, the merits of which the Deputy Receiver denies vigorously.

## II. THE PLAN OF LIQUIDATION

24. The Deputy Receiver has devised a proposed plan of liquidation (the "Liquidation Plan"), focused principally on marshaling the Companies' assets and allocating and distributing them among their creditors in accordance with applicable priorities, and the subsequent wind-down and liquidation of their affairs.

25. The rights and liabilities of creditors, policyholders, insureds, stockholders, members, and all other persons interested in the property and assets of the Companies will be fixed as of the date of the entry of the Order of Liquidation. Va. Code Ann. § 38.2-1512 (Michie 2001); see also Receivership Order ¶ 21.

26. By this Application, the Deputy Receiver seeks authority by Order of the Commission for the liquidation, pursuant to which he would:

- a. Establish certain claim filing periods and Bar Dates for obligations of the

Companies, and mail and publish notices of such claim filing deadlines to all interested parties, as described in greater detail below;

- b. Provide for the orderly transfer, reinsurance, cancellation or non-renewal of ROA's direct insurance policies under such terms and circumstances deemed by the Deputy Receiver to be in the best interests of ROA and its insureds, subject to restrictions and conditions imposed by the orders of the Circuit Court and the Commission and by other applicable law. More specifically, the Deputy Receiver requests that the Commission order the cancellation of all such direct insurance business effective on or before the last date for which claims arising thereunder would be covered by the applicable insurance guaranty association, unless the Deputy Receiver has been able, before that date, to transfer part or all of such insurance policies to another insurer by assumption reinsurance or otherwise;
- c. Continue managing the affairs of the Companies until such time as they are liquidated and dissolved;
- d. Pay the costs and expenses of administration, pursuant to Va. Code Ann. §§ 38.2-1509(B)(1) and 38.2-1510;
- e. Adjudicate and pay the claims of all secured creditors with a perfected security interest not voidable under Va. Code § 38.2-1513 to the extent of the value of their security;
- f. Adjudicate and pay the claims of the insurance guaranty associations for "covered claims" and "contractual obligations," as defined in § 38.2-1603

and similar provisions under other applicable statutes, and the claims of other policyholders arising out of ROA insurance contracts, apportioned without preference, such payments to be made from ROA assets after resolution by the Commission of issues raised in the Joint Petition of the Tennessee Risk Retention Groups opposing such payments;

- g. Pay 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;
- h. Adjudicate and pay claims for wages entitled to priority as provided in Va. Code Ann. § 38.2-1514;
- i. Be authorized to maintain a reserve in an amount he deems adequate for claims, costs, expenses, unknown claims, and contingencies, over and above any existing reserves for direct insurance obligations, until final liquidation of ROA and TRG;
- j. Adjudicate and pay, on a *pro-rata* basis to the extent assets are available, claims of all other creditors;
- k. In the event that he is unable find any particular person owed funds by the Companies, deliver such unclaimed funds to the custody of the State of that person's last known address, as shown by the Companies' books and records, pursuant to the procedures established by that State's unclaimed property laws;
- l. Be authorized to create a trust to hold any unclaimed funds if the

applicable State unclaimed property laws did not permit him to deliver any such unclaimed funds to the relevant States prior to the date that ROA and TRG would cease to exist and the receivership would terminate;

- m. Be authorized to cause a third party or contractor of the Companies to assume remaining obligations and contingencies of ROA or TRG 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 ROA or TRG obligations or contingencies; and
- n. Take all steps necessary and appropriate to liquidate and dissolve ROA and TRG as soon as reasonably practicable.

27. In order to bring finality to the financial affairs of the Companies in furtherance of the liquidation, it would be both necessary and appropriate to establish initial deadlines (the initial "Bar Dates") for filing all claims against the Companies (including contingent claims), with the exception of the following two specifically enumerated types of claims, which would not be subject to the initial Bar Dates:

- a. Claims arising under direct policies of insurance issued by ROA, including claims for Disability Payments (which do not include claims arising under reinsurance agreements), that have already been submitted properly to ROA or the Deputy Receiver (the "Pending Direct Claims"); and
- b. Proper administrative expense claims (*e.g.*, claims for payment of services

rendered, or goods supplied, to the Companies at the request of the Deputy Receiver after January 29, 2003 (the "Administrative Claims");

28. The Deputy Receiver submits that two initial Bar Dates, with notice thereof provided by first-class United States mail (and by publication) to all known claimants, creditors, and policyholders at the last known address disclosed on the books and records of the Companies, should be established for the Companies as part of the Liquidation. One initial Bar Date (the "Direct Policy Bar Date") would apply only to claims arising under direct policies of insurance (but not reinsurance contracts) issued by ROA (the "Direct Policy Claims"). The Direct Policy Bar Date would require that all claims, whether actual or contingent, arising under such policies must be presented to the Deputy Receiver on or before the later of (a) the General Bar Date defined below, and (b) one year after expiration of the ROA direct insurance policy under which they arise. The other initial Bar Date (the "General Bar Date") would be established for all claims (the "General Claims") other than Pending Direct Claims, Administrative Claims, and Direct Policy Claims. The Deputy Receiver submits that the General Bar Date should be set initially for six months following the date of the Order setting the initial Bar Dates.

29. The Deputy Receiver requests authority, in his reasonable discretion as part of the Liquidation, to extend the Direct Policy Bar Date and/or the General Bar Date by up to one year. The Deputy Receiver also requests approval for a requirement that all claims against the Companies, except Pending Direct Claims and Administrative Claims, be filed before the applicable initial Bar Dates, and that he be authorized to promulgate reasonable requirements for the method of presentment for such claims. He requests in addition that approved claims filed

after the applicable initial Bar Dates (including contingent claims), with the exception of Pending Direct Claims and Administrative Claims, be subordinated in payment to all timely filed claims.

30. The Deputy Receiver also submits that a dispositive claim date (the “Final Bar Date”) should be established at a reasonable time prior to closure of the receivership, by which all claims must have been submitted properly and rendered non-contingent. It is essential that the estate’s liabilities be fixed before final distributions of assets are made. Therefore, all claims of whatsoever nature should be permanently barred from sharing in the assets of the Companies if such claims are not submitted properly to the Deputy Receiver before the Final Bar Date.

31. The Deputy Receiver proposes that he provide written notice by first-class United States mail to all known claimants, creditors, and policyholders of the initial Bar Dates (and any extension thereof) and claim submission instructions at their last known addresses as disclosed in the books and records of the Companies, in a form reasonably calculated to provide interested persons with notice of the proposed Bar Dates (and any extension thereof) and the consequences of failing to timely file claims against the Companies. However, the Deputy Receiver requests authority for the following additional provisions:

- a. the Deputy Receiver should not be required to mail a notice if he reasonably believes that the last known address is no longer valid; and
- b. The Deputy Receiver should also publish notice of the Bar Dates for one day each week for two consecutive weeks in the Richmond Times-Dispatch, The Wall Street Journal, and USA Today, and he should publish notice in such newspapers of any extension of the Bar Dates. The

publication notice would be of a form reasonably calculated to provide sufficient notice to any claimant, creditor, or policyholder who does not receive written notice of the Bar Date.

32. The Deputy Receiver requests that the Commission order that all contingent claims that are otherwise timely filed must be made certain and non-contingent before the Final Bar Date, including General Claims submitted by policyholders or reinsureds for all claims filed or reported after their submission of claims against the receivership estate. Claims remaining contingent as of the Final Bar Date should be deemed barred as of that date.

### **III. HEARINGS**

33. The Deputy Receiver requests that the Commission schedule two hearings for the consideration of the foregoing.

34. Because the cessation of payments to Direct Insureds creates a substantial hardship to those who would otherwise receive such payments, the Deputy Receiver requests that the Commission set a hearing (the Liquidation Hearing) at the earliest possible date upon the request for a finding of insolvency, Order of Liquidation, cancellation of direct insurance policies, and continuation of Disability Payments. The Deputy Receiver submits that the only issues to be considered at the Liquidation Hearing should be whether ROA is insolvent and should be liquidated, whether the Disability Payments should be continued, and whether the direct insurance policies should be cancelled.

35. The need for expeditious resolution by the Commission of the ability to cancel direct insurance policies arises from provisions in applicable insurance guaranty acts such as §38.2-1606.A.1. This provision limits coverage by the Virginia Property and Casualty Insurance

Guaranty Association (the "Virginia Association") to claims arising before 91 days after the determination of insolvency. Thus, three months after the Commission enters an Order of Liquidation with finding of insolvency, guaranty fund coverage for losses arising under ROA's direct insurance policies issued in Virginia would end. This limitation period varies from state to state, some guaranty act statutes providing an even shorter term of coverage after they are "triggered." For example, in Alabama, Mississippi, and Tennessee (three states in which ROA has substantial insurance business in force) this period is thirty days. The Deputy Receiver fears that it may not be possible to present, obtain a decision upon, and implement his request for authority to cancel policies within the time-frame created by such guaranty association provisions.

36. Any party opposed to a finding of insolvency, Order of Liquidation, to continuation of the Disability Payments, or to the cancellation of the direct insurance policies, should be required to present such opposition at the Liquidation Hearing and to provide to the Commission, the Deputy Receiver, and counsel for the Deputy Receiver, no later than ten days before the Liquidation Hearing, notice of such opposition, with a full statement as to the basis therefor, and a list of anticipated witnesses, the substance of the anticipated testimony, and a list of exhibits to be offered in support of the opposition. The statement of the basis for the opposition shall contain at least (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. The statement of opposition should be deemed filed with the Commission only upon receipt of the original and fifteen (15) copies thereof by the Clerk of the Commission at the following address: State Corporation Commission, P.O. Box 1197,

Richmond, Virginia 23218; and delivery of one complete copy of any such filing to each of the Deputy Receiver, Alfred W. Gross, at 4200 Innslake Drive, Glen Allen, Virginia 23060, and counsel for the Deputy Receiver, Patrick H. Cantilo, at the same address, on or before the date required for filing with the Commission.

37. The Deputy Receiver submits that a reasonable time for the Liquidation Hearing would be 30 days following publication and distribution of notice of the date thereof.

38. The Deputy Receiver requests that the Commission also set a hearing with respect to all other matters raised in this Application, and any related matters raised by the Deputy Receiver in any supplemental or amended application, (the Other Matters Hearing) at which any interested party may present opposition to any relief sought herein by the Deputy Receiver (other than the finding of insolvency, Order of Liquidation, continuation of Disability Payments, and cancellation of the direct insurance policies).

39. No later than 30 days before the Liquidation Hearing and 60 days before the Other Matters Hearing, the Deputy Receiver would provide written notice of the Liquidation Hearing and the Other Matters Hearing by first-class United States mail, to the last known address on the books and records of the Companies of all known creditors, claimants, and policyholders of the Companies.

40. Beginning no later than 30 days before the Liquidation Hearing and 60 days before the Other Matters Hearing, the Deputy Receiver proposes to publish notice of said hearings. 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 requests authority to use publication notice, in lieu of notice by first-class United States

mail, if the Deputy Receiver reasonably believes that the last known address is no longer valid for any particular recipient.

41. The Deputy Receiver requests that all persons who expect to appear at the Other Matters Hearing for the purpose of opposing any relief sought herein by the Deputy Receiver (other than the finding of insolvency, Order of Liquidation, continuation of Disability Payments, and cancellation of the direct insurance policies) be required, no later than 30 days before the Other Matters Hearing, to file with the Commission, and provide a copy to each of the Deputy Receiver and counsel for the Deputy Receiver, a Notice of Participation as Respondent, 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.

42. The Deputy Receiver further requests that all persons who timely file a Notice of Participation as Respondent, and who still desire to participate in the Other Matters Hearing, be required to file with the Commission and deliver a copy to each of the Deputy Receiver and counsel for the Deputy Receiver, no later than 20 days before such hearing, the prepared testimony and exhibits of each witness expecting to present direct testimony in opposition to any relief sought herein by the Deputy Receiver (other than the finding of insolvency, Order of Liquidation, continuation of Disability Payments, and cancellation of the direct insurance policies). The Deputy Receiver requests that all Notices of Participation as Respondent, pre-filed testimony and exhibits, and all other pleadings or related documents be deemed filed with the Commission only upon receipt of the original and fifteen (15) copies thereof by the Clerk of the Commission at the following address: State Corporation Commission, P.O. Box 1197,

Richmond, Virginia 23218; and that service of one complete copy of any required filing shall also be required to be made upon each of the Deputy Receiver, Alfred W. Gross, at 4200 Innslake Drive, Glen Allen, Virginia 23060, and on counsel for the Deputy Receiver, Patrick H. Cantilo, at the same address, on or before the date required for filing with the Commission.

WHEREFORE, PREMISES CONSIDERED, the Deputy Receiver requests:

1. An order:
  - a. Setting a Liquidation Hearing for the consideration and requested approval solely of the finding of insolvency, Order of Liquidation, continuation of Disability Payments, and cancellation of the direct insurance policies;
  - b. Approving 30 days' notice of the Liquidation Hearing by mail and publication as proposed in this Application, and the requirement of ten days' notice to the Commission, the Deputy Receiver and his counsel of opposition thereto;
  - c. Setting a hearing --the Other Matters Hearing - on other relief sought herein, and other issues raised by the Deputy Receiver in relation to the Application;
  - d. Approving the Deputy Receiver's proposal to provide 60 days notice of the Other Matters Hearing by mail and publication as proposed in this Application;
  - e. Approving such notices by publication as sufficient notice, in lieu of notice by first-class United States mail, if the Deputy Receiver reasonably believes that the person's last known address is no longer valid;

- f. Directing all persons who expect to appear at the hearing for the purpose of opposing the relief and authority requested by the Application (other than the finding of insolvency, Order of Liquidation, continuation of Disability Payments, and cancellation of the direct insurance policies), no later than 30 days before the Other Matters Hearing, to file with the Commission, and provide a copy to the Deputy Receiver and his counsel, a Notice of Participation as Respondent, 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; and
- g. Directing all persons who have timely filed a Notice of Participation as Respondent, and who still desire to participate in the hearing for the purpose of opposing the Application (other than the finding of insolvency, Order of Liquidation, continuation of Disability Payments, and cancellation of the direct insurance policies), to file with the Commission and deliver a copy to the Deputy Receiver and his counsel, no later than 20 days before the Other Matters Hearing, the prepared testimony and exhibits of each witness expecting to present direct testimony in opposition to the Application; and
- h. Providing that all Notices of Participation as Respondent, pre-filed testimony and exhibits, and all other pleadings or related documents shall be deemed filed with the Commission only upon receipt of the original

and fifteen (15) copies thereof by the Clerk of the Commission at the following address: State Corporation Commission, P.O. Box 1197, Richmond, Virginia 23218; and that service of one complete copy of any required filing shall also be required to be made upon the Deputy Receiver, Alfred W. Gross, at 4200 Innslake Drive, Glen Allen, Virginia 23060, and on his counsel, Patrick H. Cantilo at the same address, on or before the date required for filing with the Commission.

2. Following the Liquidation Hearing, a second order (the "Liquidation Order"):
  - a. Finding ROA to be insolvent; and
  - b. Declaring that further efforts to rehabilitate the Companies would be useless, and that the Companies should be liquidated;
  - c. Approving the continuation of Disability Payments from ROA assets until such payments can be made by guaranty associations or pending further Orders of the Commission; and
  - d. Authorizing the cancellation of ROA's direct insurance policies as more fully set forth in the Application;
3. Following the Other Matters Hearing, a third order (the "Other Matters Order"):
  - a. Establishing an initial General Bar Date six months following the date of such Order, applicable to all claims against the Companies other than Pending Direct Claims, Administrative Claims, and Direct Policy Claims, all as more fully described above;
  - b. Establishing an initial Direct Policy Bar Date upon the later of (a) the General Bar

Date, and (b) one year following termination of the underlying direct insurance policy, such Bar Date applicable to all claims arising under ROA's direct insurance policies;

c. Authorizing the Deputy Receiver to:

- i. mail and publish notices of such initial Bar Dates to all interested parties, as described in greater detail below;
- ii. continue managing the affairs of the Companies until such time as they are liquidated and dissolved;
- iii. pay the costs and expenses of administration, pursuant to Va. Code Ann. §§ 38.2-1509(B)(1) and 38.2-1510;
- iv. adjudicate and pay the claims of all secured creditors with a perfected security interest not voidable under Va. Code § 38.2-1513 to the extent of the value of their security;
- v. adjudicate and pay the claims of the associations for "covered claims" and "contractual obligations," as defined in § 38.2-1603 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 ROA assets after resolution by the Commission of issues raised in the Joint Petition of the Tennessee Risk Retention Groups opposing such payments;
- vi. maintain a reasonable reserve for claims, costs, expenses, unknown claims, and contingencies, over and above any existing reserves for direct

- insurance claims, until final liquidation of the Companies;
- vii. pay 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;
  - viii. adjudicate and pay claims for wages entitled to priority as provided in Va. Code Ann. § 38.2-1514;
  - ix. adjudicate and pay, on a *pro-rata* basis to the extent assets are available, claims of all other creditors;
  - x. in the event that he cannot find any person owed funds by the Companies, deliver such unclaimed funds to the custody of the State of that person's last known address, as shown by the Companies' books and records, pursuant to the procedures established by that State's unclaimed property laws;
  - xi. create a trust to hold any unclaimed funds if the applicable State unclaimed property laws did not permit him to deliver any such unclaimed funds to the relevant States prior to the date that ROA and TRG would cease to exist and the receivership would terminate;
  - xii. cause a third party or contractor of the Companies to assume remaining obligations and contingencies of ROA or TRG 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 ROA or TRG obligations or contingencies; and

- xiii. take all steps necessary and appropriate to liquidate and dissolve ROA and TRG as soon as reasonably practicable.
- d. Declaring that the rights, interests, and contingent claims of all policyholders, and creditors of the Companies are fixed as of the date of the entry of the Order of Liquidation;
- e. Ordering that claims submitted after the applicable initial Bar Date, if approved, would be subordinated in payment to all timely filed claims and that all claims of whatsoever nature be permanently barred from sharing in the assets of the Companies if such claims are not submitted to the Deputy Receiver before the Final Bar Date;
- f. Authorizing the Deputy Receiver, in his reasonable discretion, to issue a directive extending the General Bar Date or the Direct Policy Bar Date for a period no greater than one year;
- g. Approving the Deputy Receiver's proposal to provide written notice of the Bar Dates (and any extension thereof) and proof of claim instructions, by first-class United States mail to all known claimants, creditors, and policyholders at their last known address disclosed in the books and records of the Companies, in a form reasonably calculated to provide interested persons with notice of the proposed Bar Dates (and any extension thereof) and the consequences of failing to timely file claims against the Companies, except that the Deputy Receiver would not be required to mail a notice if he reasonably believes that the last known address is no longer valid;

- h. Approving the Deputy Receiver's proposal to publish notice of the Bar Date (and any extension thereof) and proof of claim instructions for one day each week for two consecutive weeks in the Richmond Times-Dispatch, The Wall Street Journal, and USA Today. The publication notice would be of a form reasonably calculated to provide sufficient notice to any claimant, creditor, or policyholder who does not receive direct notice by first-class United States mail of the Bar Date (and any extension thereof) and proof of claim instructions;
- i. Approving the termination and closure of these receivership proceedings without the necessity for further order of the Commission upon completion of the Liquidation; and
- j. Granting such other and further relief as the Commission may deem proper under the circumstances.

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: Patrick H. Cantilo

Of Counsel

Cantilo & Bennett, L.L.P.

Patrick H. Cantilo (Texas Bar No. 09531750)  
Mark F. Bennett (Texas Bar No. 02148905)  
Pierre J. Riou (Texas Bar No. 00794531)  
7501C North Capital of Texas Highway, Suite 200  
Austin, Texas 78731  
(512) 478-6000  
(512) 404-6550 Fax  
Attorneys for the Deputy Receiver

## CERTIFICATE OF SERVICE

I hereby certify that on April 30, 2003, the original and 15 copies of the foregoing document was hand delivered to:

Mr. Joel Peck  
Clerk of the Commission  
STATE CORPORATION COMMISSION  
Tyler Building  
1300 E. Main Street  
Richmond, Virginia 23219

and one copy was hand delivered to:

Mr. Peter B. Smith, Senior Counsel  
Office of General Counsel  
STATE CORPORATION COMMISSION  
1300 E. Main Street  
P.O. Box 1197  
Richmond, Virginia 23218

and one copy was sent via facsimile and mailed, postage prepaid, to the following parties of record:

C. William Waechter, Jr., Esq.  
WILLIAMS, MULLEN, CLARK & DOBBINS  
Two James Center  
1021 East Cary Street  
P.O. Box 1320  
Richmond, Virginia 23218-1320  
(804) 783-6492  
(804) 783-6507 Fax  
Counsel for The Reciprocal Group

F. Claiborne Johnston, Jr., Esq.  
TROUTMAN SANDERS, L.L.P.  
1111 East Main Street  
P.O. Box 1122  
Richmond, Virginia 23218-1122  
(804) 697-1214  
(804) 697-1339 Fax

Counsel for Reciprocal of America

H. Lane Kneedler, Esq.

Walter A. Marston, Jr., Esq.

Curtis G. Manchester, Esq.

Kevin R. McNally, Esq.

REED SMITH LLP

Riverfront Plaza - West Tower

901 East Byrd Street, Suite 1700

Richmond, Virginia 23219-4069

(804) 344-3400

(804) 344-3402 Fax

Counsel to John Knox Walkup, Special Deputy Receiver for Doctors Insurance Reciprocal, RRG, Robert S. Brandt, Special Deputy Receiver for American National Lawyers Insurance Reciprocal, RRG, and Michael D. Pearigen, Special Deputy Receiver for The Reciprocal Alliance, RRG

and one copy was sent via Federal Express overnight delivery to the following parties of record:

J. Graham Matherne, Esq.

William Gibson, Esq.

WYATT, TARRANT & COMBS, LLP

2525 West End Avenue, Suite 1500

Nashville, Tennessee 37203-1423

(615) 251-6708

(615) 256-1726 Fax

Of Counsel to John Knox Walkup, Special Deputy Receiver for Doctors Insurance Reciprocal, RRG

Kathryn A. Stephenson, Esq.

Paul W. Ambrosius, Esq.

TRAUGER, NEY & TUKE

The Southern Turf Building

222 Fourth Avenue North

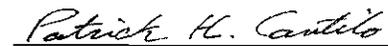
Nashville, Tennessee 37219-2117

(615) 256-8585

(615) 256-7444 Fax

Of Counsel to Robert S. Brandt, Special Deputy Receiver for American National Lawyers Insurance Reciprocal, RRG

Leslie F. Shechter, Esq.  
J. W. Luna, Esq.  
FARMER & LUNA, PLLC  
333 Union Street, Suite 300  
Nashville, Tennessee 37201  
(615) 254-9146  
(615) 254-7123 Fax  
Of Counsel to Michael D. Pearigen, Special Deputy Receiver for The Reciprocal  
Alliance, RRG

  
\_\_\_\_\_  
Patrick H. Cantilo