

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

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

Applicant,

v.

RECIPROCAL OF AMERICA and
THE RECIPROCAL GROUP,

Respondents.

§
§
§
§
§
§
§
§
§
§
§

Case No. INS-2003-00024

**TENTH DIRECTIVE OF DEPUTY RECEIVER
IMPOSING SUSPENSION AND MORATORIUM**

1. On January 29, 2003, in a case styled Commonwealth of Virginia ex rel. State Corporation Commission v. Reciprocal of America, The Reciprocal Group, and Jody M. Wagner, Treasurer of Virginia, Case No. CH03-135, the Circuit Court of the City of Richmond (the "Court") found that Reciprocal of America ("ROA") and The Reciprocal Group ("TRG") (collectively, ROA and TRG are referred to as "ROA" or the "Companies") are in a condition, as a single insurance business enterprise, where any further transaction of business will be hazardous to the policyholders, creditors, members, subscribers, and the public. Therefore, the Court issued its Final Order Appointing Receiver for Rehabilitation or Liquidation (the "Receivership Order"), appointing the State Corporation Commission (the "Commission") of the Commonwealth of Virginia, as Receiver, Alfred W. Gross, the Commissioner of the Commission's Bureau of Insurance, as Deputy Receiver, and Melvin J. Dillon as Special Deputy Receiver of the Companies, in accordance with Title 38.2 Chapter 12 and 15 of the Virginia Code. Both upon commencement, and throughout these receivership proceedings, the Deputy Receiver's staff has been undertaking a continuous financial analysis of ROA's financial position in order to properly establish a claims payment plan which is in the best interest of the insureds and policyholders of the Companies.

2. Pursuant to authority granted by the Commission's Final Order dated December 13, 2005, issued in a case styled Application of Reciprocal of America and The Reciprocal Group for Approval to Increase Payment Percentage from 17% to 25%, Case No. INS-2007-00065, the Deputy Receiver issued the Ninth Directive which, among other things, (1) authorized ROA to make payment of an additional 8% to all claimants who had received a 17% distribution on their claims as of that date, and (2) directed that the percentage and aggregate amount of such payments could be increased when, and to the extent that, additional payments were authorized by further orders of the Commission.

3. The following terms are defined for purposes of this directive:
 - a. "Policy Claims for Economic Damages" – claims by associations, policyholders, and insureds for indemnification or defense costs covered under an ROA insurance policy (also known as "Direct Claims").
 - b. "Other Policy Claims" – claims by associations, policyholders, and insureds other than Policy Claims for Economic Damages, such as claims for non-economic damages, punitive damages, exemplary damages, extra-contractual claims, and awards of attorney fees for substantially prevailing in litigation against ROA (also known as "Indirect Claims").

4. The Deputy Receiver's staff has recommended that no payments be made on approved Other Policy Claims until after all approved Policy Claims for Economic Damages have been paid in full. The bases for this recommendation are:

- a. No payments have yet been made to any associations, policyholders, or insureds for Other Policy Claims; however, some such claims are pending.
- b. Each party to an insurance policy bargains for the "outer limit to its liability," and ROA's insurance policies provide for a defense against lawsuits and for indemnification of economic loss up to the policies' limits of liability.
- c. For purposes of determining what percentage can be paid on policy claims, it is important for the Deputy Receiver to be able to ascertain the "outer limit to [ROA's] liability" on outstanding claims arising under its policies.
- d. The outer limit of ROA's liability for pending Policy Claims for Economic Damages is easily ascertainable, whereas the outer limit of ROA's liability for "Other Policy Claims" is not easily ascertainable.
- e. Suspending any and all payments on Other Policy Claims would permit increased pro rata payments to be made on all approved Policy Claims for Economic Damages.
- f. Paying all approved Policy Claims for Economic Damages in full, prior to making any payments on approved Other Policy Claims, would help ensure that all policyholders and insureds receive the benefit of the bargain of their insurance policies before any association, policyholder, or insured receives payment for non-bargained-for items outside the coverage of the policies.

5. The Deputy Receiver agrees with staff's recommendations, as set forth above, and concludes that adopting those recommendations would be in the best interest of policyholders and insureds.

THEREFORE, the Deputy Receiver hereby directs that:

1. Other Policy Claims are subordinate to Policy Claims for Economic Damages; and
2. No payments shall be made on any approved Other Policy Claims until all approved Policy Claims for Economic Damages have been paid in full.

All of the foregoing is subject to further directives of the Deputy Receiver and orders of the Commission.

It is so directed, effective on this 19 day of July 2010:



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