

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

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

SIXTH DIRECTIVE OF DEPUTY RECEIVER
ADOPTING AMENDED RECEIVERSHIP APPEAL PROCEDURE

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, the Circuit Court for the City of Richmond found that Reciprocal of America (“ROA”) and The Reciprocal Group (“TRG”) (collectively, ROA and TRG are referred to as 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, Chapters 12 and 15 of the Virginia Code.

2. Pursuant to authority granted in the Receivership Order, the Deputy Receiver in his Third Directive of the Deputy Receiver Adopting Receivership Appeal Procedure adopted a receivership appeal procedure (the “Original Receivership Appeal Procedure”) for appeals or challenges of any decision made by the Deputy Receiver or Special Deputy Receiver with respect to claims against the Companies other than claims arising under contracts of insurance or insurance policies issued by ROA.

3. The Deputy Receiver has concluded that the Original Receivership Appeal Procedure should be amended (the “Amended Receivership Appeal Procedure”) to (i) apply to claims arising under policies or contracts of insurance issued or assumed by ROA (“Insurance Policy Claims”), (ii) cure minor defects in the Original Receivership Appeal Procedure, and (iii) clarify the Original Receivership Appeal Procedure (collectively, the “Amendment”).

4. Except as to its application to Insurance Policy Claims, the Amendment to the Original Receivership Appeal Procedure is not intended by the Deputy Receiver to be substantive. However, in the event of a conflict between the Original Receivership Appeal Procedure and the Amended Receivership Appeal Procedure, the Original Receivership Appeal Procedure will apply to claims for which the Date of Decision is prior to the effective date of this Sixth Directive, while the Amended Receivership Appeal Procedure will apply to claims for which the Date of Decision is the same as, or after, the effective date of this Sixth Directive.

5. The Amended Receivership Appeal Procedure, and the Original Receivership Appeal Procedure when applicable, will be conducted under the sole jurisdiction of the Commission. The approval, rejection, or determination of claims against the Companies will continue as, and when, such determinations can reasonably be made by the Deputy Receiver or Special Deputy Receiver, but the suspension and moratorium on the payment of creditor claims under the Deputy Receiver's First Directive Continuing Insurance Policy Payments and Imposing Suspension and Moratorium on Other Claim Payments will remain in effect.

6. To the extent of any conflict or inconsistency between this Sixth Directive and any prior directive or policy, this Sixth Directive will govern and control, except as provided in paragraph four above and pending further Orders and Directives.

THEREFORE, in accordance with the powers granted to the Deputy Receiver in the Receivership Order, THE DEPUTY RECEIVER HEREBY DIRECTS AND ADOPTS THE FOLLOWING AMENDED RECEIVERSHIP APPEAL PROCEDURE FOR THE RECEIVERSHIP OF THE COMPANIES:

RECIPROCAL OF AMERICA, and THE RECIPROCAL GROUP,

In Receivership for Rehabilitation or Liquidation

AMENDED RECEIVERSHIP APPEAL PROCEDURE

**THIS PROCEDURE GOVERNS APPEALS AND
CHALLENGES OF ANY DECISION MADE BY
THE RECEIVER OF ROA AND TRG.**

A. GENERAL TERMS AND APPLICABILITY OF PROCEDURE

1. For purposes of this Amended Receivership Appeal Procedure, the following terms shall have the meaning set out herein:

a. **Appealable Decision** means a decision of the Deputy Receiver or Special Deputy Receiver that concerns a specific Claim made against the Companies, whether or not arising under a subscriber agreement and power of attorney, policy, or contract issued or assumed by the Companies, or which affects, or may affect, a financial interest, contract right, or legal entitlement of the Claimant.

b. **Claim** means a request for payment, other consideration, or other relief, asserted by any person against the Companies, the Special Deputy Receiver, or the Deputy Receiver.

c. **Claim Determination** means the decision made by the Companies, the Special Deputy Receiver, or the Deputy Receiver as to any Claim asserted against the Companies, including, but not limited to, any determination as to the priority to be afforded any Claim for purposes of § 38.2-1509(B)(1) of the CODE OF VIRGINIA, or amount, if any, to be paid upon such Claim.

d. **Claimant** means a person or other legal entity asserting a Claim against the Companies and, if a decision upon such a Claim is appealed, the person or other legal entity making such appeal.

e. **Commission** means the State Corporation Commission of the Commonwealth of Virginia.

f. **Commission Appeal Deadline** means the deadline before which a Claimant may appeal a Determination of Appeal, determined as follows:

- i if the Deputy Receiver issues a Determination of Appeal, the Commission Appeal Deadline is thirty (30) days following the date reflected on the Deputy Receiver's Determination of Appeal;
- ii if the Deputy Receiver issues an Extension of Appeal, but does not issue a Determination of Appeal before the Extended Appeal Deadline, the Commission Appeal Deadline is thirty (30) days following the Extended Appeal Deadline;
- iii if the Deputy Receiver does not issue a Determination of Appeal, and does not issue an Extension of Appeal, the Commission Appeal Deadline is the sixtieth (60th) day following the date on which the Deputy Receiver actually received the Notice of Appeal.

g. **Companies** means Reciprocal of America and The Reciprocal Group, each in receivership.

h. **Date of Decision** means:

i with respect to the Deputy Receiver's decision on a specific Claim, the date shown on the Notice of Claim Determination;

ii with respect to any non-Claim matter, the day the Deputy Receiver announces his decision; or

iii with respect to any non-Claim matter that is not announced, the date the decision is made.

i. **Deputy Receiver** means Alfred W. Gross, or his successor, as Commissioner of Insurance, State Corporation Commission, Commonwealth of Virginia, in his (or her) capacity as Deputy Receiver of the Companies, and, unless the context indicates otherwise, includes the Special Deputy Receiver and any other duly authorized representative of the Receiver.

j. **Determination of Appeal** means the decision made by the Deputy Receiver upon an appeal of a Notice of Claim Determination.

k. **Extended Appeal Deadline** means the date to which has been extended the deadline by which the Deputy Receiver must determine an appeal, as specified in an Extension of Appeal sent by the Deputy Receiver in accordance with paragraph B.8 of this Amended Receivership Appeal Procedure.

l. **Extension of Appeal** means a decision by the Deputy Receiver to postpone the deadline by which a decision must be made upon an appeal, in accordance with paragraph B.8 of this Amended Receivership Appeal Procedure.

m. **Insurance Policy Claims** shall mean Claims arising under policies or contracts of insurance issued or assumed by ROA, including specifically, but without limitation, any request for payment of any settlement, adjudication, or judgment upon such Claims approved or awarded by any court, administrative process, or other tribunal.

n. **Non Insurance Policy Claims** are all Claims against the Companies other than Insurance Policy Claims, including, but not limited to, Claims of secured creditors, Claims of unsecured general creditors, Claims purporting to

constitute costs or expenses of administration for purposes of § 38.2-1509(B)(1) of the CODE OF VIRGINIA, and Claims of owners or equity holders.

o. **Notice of Appeal** means the notification by a Claimant to the Deputy Receiver of the Claimant's appeal of a Notice of Claim Determination in compliance with paragraph B.3 of this Amended Receivership Appeal Procedure.

p. **Notice of Claim Determination** means the notification sent by the Companies, the Special Deputy Receiver, or the Deputy Receiver to a Claimant of the decision made on a specific Claim.

q. **Petition** means a Petition for Review of Deputy Receiver's Determination of Appeal as described in paragraph C.1.

r. **Supreme Court** means the Supreme Court of the Commonwealth of Virginia.

2. All appeals or challenges of any Claim Determination made by the Companies, the Deputy Receiver, or Special Deputy Receiver, must be submitted to the Deputy Receiver, as specified herein, to the exclusion of any other method of submitting or adjudicating the priority and payment of such Claims in any court, administrative process, or other tribunal, subject to the further Order of the Commission. Appeals may only be made by such parties who have proper legal standing to bring such appeals.

3. Certain Insurance Policy Claims may entitle the Claimant to full or partial payment by a state insurance guaranty association. This Amended Receivership Appeal Procedure does not apply to any claim asserted against a guaranty association, or to the decision of a guaranty association upon any such claim. This Amended Receivership Appeal Procedure does apply to claims asserted by the insurance guaranty associations against the Deputy Receiver, Special Deputy Receiver, or the Companies.

4. Even though payment may not be made on a Non Insurance Policy Claim at the time the Claim is asserted, the Deputy Receiver or Special Deputy Receiver may still determine the priority to be accorded such Claim under § 38.2-1509(B)(1) of the CODE OF VIRGINIA without determining what amount, if any, should be paid on such Claim. In that event, the priority determination as to any such Non Insurance Policy Claim is itself an Appealable Decision.

5. The Deputy Receiver is authorized to determine any appeals or challenges of Claim Determinations made by the Companies or the Special Deputy Receiver, as provided below.

6. Any person or entity is authorized to appeal to the Commission, as provided below, any Determination of Appeal of the Deputy Receiver under paragraph A.5, above.

7. Any person or entity is authorized to appeal to the Supreme Court any Claim determination of the Commission under paragraph A.6, above, subject to the Commission's Rules of Practice and Procedure and the Rules of the Supreme Court.

8. The Amended Receivership Appeal Procedure is the sole method of asserting appeals or challenges of any Appealable Decision made by the Deputy Receiver, Special Deputy Receiver, or the Companies.

9. In order to challenge or seek review of any Appealable Decision of the Deputy Receiver, including any decision concerning a Claim against the Companies, a Claimant must adhere strictly to the steps and deadlines established in this Amended Receivership Appeal Procedure. Failure to fully adhere to this Amended Receivership Appeal Procedure will result in a waiver of the appeal, and the Deputy Receiver's decision as to the Appealable Decision will become final and non-appealable.

10. The date by which an appeal must be presented is governed by the Date of Decision.

11. There are three levels of appeal which may be available to a Claimant: appeal to the Deputy Receiver, appeal to the Commission, and appeal to the Supreme Court. A Claimant may not appeal to the Commission without first appealing to the Deputy Receiver in the manner described below, and may not have the right to appeal to the Supreme Court without first appealing to the Commission.

**B. APPEAL TO THE DEPUTY RECEIVER:
DEADLINE: 30 DAYS FROM DATE OF DECISION**

1. Decisions by the Deputy Receiver must be appealed within thirty (30) days following the Date of Decision.

2. Once the Deputy Receiver concludes his review of a specific Claim, the Claimant will be sent a Notice of Claim Determination advising the Claimant of the disposition of the Claim. Such a notice may be sent to the Claimant with or without a copy of this Amended Receivership Appeal Procedure.

3. Within thirty (30) days after the Date of Decision regarding the matter being appealed, the Claimant must file with the Deputy Receiver, and the Deputy

Receiver must receive, a Notice of Appeal containing a narrative or documentary explanation of the reason for the appeal and including all documents supporting the appeal. No particular form is necessary for this notice of appeal (a letter may be sufficient), but whatever is sent by the Claimant must be clearly labeled "NOTICE OF APPEAL" on the first page. It must also contain:

- a. a copy of the Notice of Claim Determination or, if in writing, a copy of the other matter being appealed;
- b. a full and detailed explanation of the appeal;
- c. adequate documentation to support the appeal; and
- d. the following, or a substantially similar jurat, so that the appeal is sworn:

State of _____	
County of _____	
<p>BEFORE ME, the undersigned authority, on this day personally appeared _____ known to me to be the person whose name is subscribed to the foregoing Notice of Appeal, and having by me been first duly sworn, upon his (her) oath deposed and stated that the facts therein contained are true and correct to his (her) knowledge or belief.</p> <p>Given under my hand and seal of office on this _____ day of _____, 20__.</p>	
(Notary Seal)	_____ (Notary's Name) Notary Public in and for _____ County, State of _____

4. Because the date on which the Deputy Receiver receives the Notice of Appeal is very important in determining the appeal, Claimants should employ a method of delivery that will enable them to know when the appeal is actually received by the Deputy Receiver.

5. The Claimant must present all grounds and bases for appeal to the Deputy Receiver in the Notice of Appeal. Any ground or basis not presented in the Notice of Appeal will be deemed waived, and may not be presented for the first time

to the Commission unless the Commission determines that consideration of additional grounds or bases is necessary to attain the ends of justice.

6. The Notice of Appeal must be received by the Deputy Receiver at the following address no later than thirty (30) days after the Date of Decision.

*Claim Appeals
Reciprocal of America, in Receivership
c/o Mr. Melvin Dillon, Special Deputy Receiver
4200 Innslake Drive
Glen Allen, Virginia 23060*

7. If the Notice of Appeal is not received at the above address within thirty (30) days after the Date of Decision, the right to appeal the Deputy Receiver's decision will be waived and that decision (including, but not limited to, a decision set out in a Notice of Claim Determination) will become final and non-appealable.

8. Except as noted below, the Deputy Receiver will advise the Claimant of his decision regarding the appeal by sending the Claimant a written "Determination of Appeal" on or before thirty (30) days after receipt of the Notice of Appeal. However, the Deputy Receiver may extend the time by which he must determine the appeal by up to ninety (90) additional days by sending the Claimant a written "Extension of Appeal" notification on or before thirty (30) days after receipt of the Notice of Appeal.

9. If the Deputy Receiver does not send the Claimant a written Determination of Appeal or an Extension of Appeal notification within thirty (30) days following receipt of the Notice of Appeal, the appeal will be deemed automatically rejected, and the Claimant will then have thirty (30) days within which to challenge the Deputy Receiver's decision.

10. If a Claimant believes that a Determination of Appeal is incorrect, or if for any other reason the Claimant is dissatisfied with the Deputy Receiver's disposition of the appeal, whether automatic or by specific Determination of Appeal, the Claimant may challenge such disposition by following the procedures set out below. However, such appeal may only proceed if the Claimant has timely filed a Notice of Appeal using the procedures set forth above.

**C. APPEAL TO THE STATE CORPORATION COMMISSION:
DEADLINE: 30 DAYS FROM A DETERMINATION OF APPEAL,
OR 30 DAYS FROM THE EXPIRATION OF AN EXTENSION OF
APPEAL IF NO DETERMINATION, OR, IF NO DETERMINATION
AND NO EXTENSION, 60 DAYS FROM THE NOTICE OF APPEAL.**

1. A Claimant may challenge the Deputy Receiver's Determination of Appeal on or before the Commission Appeal Deadline, by filing in the Commission's receivership proceeding a "Petition for Review of Deputy Receiver's Determination of Appeal" ("Petition") styled as follows:

Commonwealth of Virginia State Corporation Commission	
COMMONWEALTH OF VIRGINIA, <u>ex rel.</u> STATE CORPORATION COMMISSION, Applicants,	Case No. INS-2003-00024
v.	
RECIPROCAL OF AMERICA, in Receivership THE RECIPROCAL GROUP, in Receivership, Respondents.	
In Re Claim of (<u>Claimant's Name</u>)	
PETITION FOR REVIEW OF DEPUTY RECEIVER'S DETERMINATION OF APPEAL	

2. The appeal may not present grounds or bases for appeal that were not presented in the preceding appeal to the Deputy Receiver unless the Commission determines that consideration of such grounds or bases is necessary to attain the ends of justice.

3. Except as provided in applicable sections of the Virginia Insurance Laws and the Orders of the Commission, proceedings regarding the Petition will be governed by the Rules of Practice and Procedure of the State Corporation Commission (the "Commission Rules").

4. Pursuant to Commission Rule 5 VAC 5-20-100(B), the Petition to the Commission shall contain: (i) the identity of the parties, (ii) a statement of the action sought and the legal basis for the Commission's jurisdiction to take the action sought, (iii) a statement of the facts, proof of which would warrant the action sought, (iv) a

statement of the legal basis for the action, and (v) a certificate showing service upon the Deputy Receiver.

5. Any formal pleading or other related document or paper shall be considered filed with the Commission upon receipt of the original and required copies by the Clerk of the Commission at the following address:

State Corporation Commission
Document Control Center
1300 Main Street
P.O. Box 2118
Richmond, Virginia 23218

6. Service must also be made on the Deputy Receiver at:

Reciprocal of America, in Receivership
4200 Innslake Drive
Glen Allen, Virginia 23060

7. Failure to file the Petition as required under this Amended Receivership Appeal Procedure waives any further right the Claimant may have to appeal, and the Deputy Receiver's Determination of Appeal becomes final.

8. Any finding, decision, judgment, order, or decree of the Commission made and entered in connection with such Petition shall be deemed a final judgment, order, or decree of the Commission as described in, and governed by, Commission Rule 5-20-220, as amended.

9. Subject to the Commission Rules and the Rules of the Supreme Court, a decision by the Commission upon a Petition may be appealable to the Supreme Court in accordance with its rules.

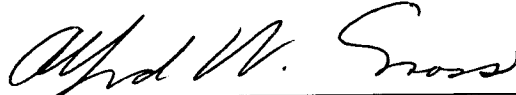
D. QUESTIONS REGARDING THIS PROCEDURE MUST BE DIRECTED IN WRITING TO THE ADDRESS IN PARAGRAPH B.6, ABOVE.

E. THIS PROCEDURE MAY BE AMENDED BY THE DEPUTY RECEIVER AT ANY TIME AND, AS AMENDED, WILL APPLY TO APPEALABLE DECISIONS FOR WHICH THE DATE OF DECISION FIRST OCCURS AFTER THE AMENDMENT.

END OF AMENDED RECEIVERSHIP APPEAL PROCEDURE

This Sixth Directive is effective as of NOV. 10TH, 2004. All of the foregoing is subject to further directives of the Deputy Receiver and orders of the State Corporation Commission of the Commonwealth of Virginia.

It is so directed:



Alfred W. Gross, Commissioner of Insurance, Bureau of Insurance, State Corporation Commission, Commonwealth of Virginia, as Deputy Receiver of the Companies