

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

AT RICHMOND, AUGUST 28, 2015

SECRETARY'S OFFICE
REGISTRATION CONTROL CENTER

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COMMONWEALTH OF VIRGINIA, *ex rel.*

STATE CORPORATION COMMISSION,
Applicant

v.

CASE NO. INS-2015-00020

RECIPROCAL OF AMERICA
and
THE RECIPROCAL GROUP,
Respondents

FINAL ORDER

On February 12, 2015, Jacqueline K. Cunningham, Commissioner for the State Corporation Commission's ("Commission") Bureau of Insurance ("Bureau"), in her capacity as Deputy Receiver of Reciprocal of America ("ROA") and The Reciprocal Group ("TRG") (collectively, "Companies"), in receivership for liquidation, filed a Motion for Scheduling Order and for Final Order Designating Claims Liquidation Date ("Motion") and for an order approving notice procedures, establishing a response date, and setting a contingent hearing ("Contingent Hearing") on the Motion to be held only in the event that written objections to the Motion were timely filed.

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,

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).

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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, *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 twelve 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

In her Motion, the Deputy Receiver requested that the Commission designate a Claims Liquidation Date of September 1, 2015, and provide that any and all claims against ROA and TRG (including any and all claims of creditors of the Reciprocal Insurance Agency, Ltd., The Premium Company of America, and Coastal Associates, Inc., of which TRG is the sole shareholder, asserted against TRG under any theory after the dissolution of those wholly owned subsidiaries of TRG), shall have been submitted properly and rendered non-contingent and liquidated (by final judgment or settlement) on or before the Claims Liquidation Date, or the

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."

claims will be permanently barred from sharing in the assets of ROA's or TRG's estate, except that the following three categories of claims would not be subject to the Claims Liquidation Date: (i) proper administrative expense claims against TRG or ROA; (ii) claims of the United States; and (iii) claims as to which an appeal is pending before the Commission or the Supreme Court of Virginia as of the Claims Liquidation Date.

On March 5, 2015, the Commission entered a Scheduling Order⁶ in which, among other things, it scheduled a Contingent Hearing for May 6, 2015, to consider a Claims Liquidation Date; appointed a Hearing Examiner to conduct any Contingent Hearing that may be held in this case; directed the Deputy Receiver to provide notice⁷ of its Motion and the Contingent Hearing to all persons interested in pending claims against the Companies that have not yet been rendered non-contingent and liquidated; and established a procedural schedule for interested persons to participate in this case.

On April 6, 2015, the Kentucky Hospitals filed a notice in which they stated they had no objection to the Deputy Receiver's proposed Claims Liquidation Date.⁸

Also on April 6, 2015, Lloyd Michael Noland, R.N. ("Noland"), by counsel, filed an Objection to Motion for Final Order Designating Claims Liquidation Date. Noland stated that the proposed Claims Liquidation Date would unduly prejudice him. Noland had litigation

⁶ Doc. Con. Cen. No. 150310106.

⁷ Proof of notice was filed March 16, 2015. *See* Ex. 1.

⁸ Although not listed in this pleading, the "Kentucky Hospitals" have at various times included: Appalachian Regional Healthcare; Baptist Health Madisonville f/k/a/ Regional Medical Center/Trover Clinic Foundation; Baptist Health Richmond f/k/a Pattie A. Clay Regional Medical Center; Caverna Memorial Hospital; Clinton County Hospital; Crittenden Health Systems; Cumberland County Hospital; Hardin Memorial Hospital; Highlands Regional Medical Center; Jane Todd Crawford Memorial Hospital; Livingston Hospital & Healthcare Service; Marcum & Wallace Hospital; Marshall County Hospital; Monroe County Medical Center; Murray-Calloway County Hospital; Ohio County Hospital; Owensboro Mercy Health System; Pineville Community Hospital; Rockcastle County Hospital and Respiratory Care Center; St. Claire Regional Medical Center; St. Joseph Mt. Sterling f/k/a Gateway Regional Medical Center; T.J. Samson Community Hospital; Twin Lakes Regional Medical Center; and Westlake Regional Hospital.

pending against ROA in the Circuit Court of Raleigh County, West Virginia ("Circuit Court"), Case No. 01-C-609-B along with a pending motion to recover attorney fees. Noland requested an extension of the Claims Liquidation Date to allow his claim to be paid from the assets of the ROA estate.

The Mississippi Insurance Guaranty Association ("MIGA") also filed a Notice of Objection to the Deputy Receiver of ROA and TRG's Motion for Scheduling Order and for Final Order Designating Claims Liquidation Date ("Objection"). MIGA stated that it was still handling policyholder-level liability insurance direct claims on policies of insurance issued by ROA. MIGA requested that: (i) it be exempted from the Claims Liquidation Date, and (ii) reserves, in an amount equal to MIGA's estimate of the value of the MIGA Claims, be created and that such reserves shall not be distributed without MIGA's consent. In the alternative, MIGA requested that its claims specifically be determined to be non-contingent and liquidated in an agreed amount.⁹

The Contingent Hearing was convened as scheduled on May 6, 2015. Patrick H. Cantilo, Esquire, appeared on behalf of the Deputy Receiver. Donald C. Beatty, Esquire, appeared on behalf of the Bureau. Cullen D. Seltzer, Esquire, and Eric C. Howlett, Esquire, appeared on behalf of MIGA. Marshall F. Berman, Esquire, Perry W. Oxley, Esquire, and J. Jarrod Jordan, Esquire, appeared on behalf of Noland.

The Deputy Receiver presented the testimony of two witnesses: Michael R. Parker ("Parker"), Special Deputy Receiver for the Companies; and Mark J. Hyland ("Hyland"), Vice President of TRG.¹⁰

⁹ On April 15, 2015, Pineville Community Hospital filed a Joinder to the MIGA and Noland Notices of Objection but withdrew this filing on April 23, 2015.

¹⁰ The pre-filed testimonies of Parker and Hyland are Exhibits 2 and 3, respectively.

Parker explained that as Special Deputy Receiver, he is responsible for the day-to-day operations of the Companies. Parker explained that all claims had to be received by the Final Bar Date, September 30, 2004. If a claim was not timely filed, it would not be paid until all other timely filed claims were paid.¹¹

Parker opined that the Deputy Receiver's Motion was filed a reasonable time in advance of the proposed Claims Liquidation Date and the closure of the receivership estate. He explained that the vast majority of claims have been liquidated, or will be liquidated before September 1, 2015, including timely filed claims, claims filed after the Final Bar Date, and all workers' compensation claims. He identified and described the 15 non-workers' compensation claims that were still pending.¹²

Parker also described the efforts undertaken by the Deputy Receiver to resolve the 13 outstanding non-workers' compensation claims administered by guaranty associations. Parker believed all the guaranty association claims could be resolved by the Claims Liquidation Date.¹³

At the hearing, Parker updated the status of the unliquidated non-workers' compensation claims, noting that there were nine MIGA claims outstanding, as well as Noland's claim.¹⁴ Parker also explained why the Deputy Receiver selected September 1, 2015, as the Claims Liquidation Date, noting that the receivership staff believed that the few remaining claims, some of which have been pending for ten years, could be resolved by that time so that the payments to the hundreds or thousands of general creditors could commence and, if any monies remain, distributions could be made to ROA's equity subscribers. Once the policyholder-level claims

¹¹ Ex. 2 at 1-3.

¹² *Id.* at 3-4.

¹³ *Id.* at 4-6.

¹⁴ Tr. at 18-21.

have been resolved, the receivership staff can commence the final wind down of the receivership, including releasing ROA's remaining employees and closing its offices. The longer ROA's offices remain open, the less money there will be available for distribution to lower priority creditors and equity subscribers.¹⁵

Parker believed that, as long as reserves are outstanding for payment of claims, the receivership cannot be wound down, ROA's claims department and offices would need to remain open, and a closing agreement could not be obtained from the Internal Revenue Service.¹⁶

Hyland testified that he is responsible for the review, payment, and notice of determination of claims filed with the Companies. He confirmed that the proposed Claims Liquidation Date will have no effect on ROA's workers' compensation claims, which were transferred to Providence Washington Insurance Company, with the exception of the "Excluded Losses."¹⁷ Hyland testified that ROA continues to process and issue Notices of Claim Determination ("NCDs") on the Excluded Losses, with an expected completion date of June 30, 2015.¹⁸

MIGA presented the testimony of Arthur Russell ("Russell"), its executive director. Russell testified that MIGA had nine unliquidated ROA claims, that one of those claims was awaiting a final dismissal order, and that MIGA and the Deputy Receiver were working to resolve all of the remaining unliquidated claims.¹⁹

¹⁵ *Id.* at 22-25.

¹⁶ *Id.* at 26-29.

¹⁷ *Commonwealth of Virginia ex rel. State Corporation Commission v. Reciprocal of America and The Reciprocal Group, in Receivership*, Case No. INS-2013-00190, 2014 S.C.C. Ann. Rept. 61, Final Order (June 16, 2014). "Excluded losses" are referred to in the Final Order and are defined in Exhibit B to the Deputy Receiver's August 2, 2013 Application filed in Case No. INS-2013-00190.

¹⁸ Ex. 3 at 2.

¹⁹ Tr. at 54-56.

Noland's attorney, Mr. Oxley ("Oxley"), testified on Noland's behalf concerning Noland's fee petition in his civil matter pending in the Circuit Court in West Virginia. Oxley confirmed that Noland's case has been in the court system for many years and that Noland submitted his original attorney fee petition in November 2013. As of the date of the hearing, the Circuit Court had not decided the case.²⁰

At the conclusion of the hearing, the Hearing Examiner directed the parties to file post-hearing briefs.

On June 16, 2015, MIGA filed a Notice of Withdrawal of Objection to Deputy Receiver's Motion.²¹ MIGA stated that the matters in controversy raised in its Objection had been resolved and withdrew its Objection with prejudice.

On June 17, 2015, the Deputy Receiver filed her Post-Hearing Brief in Support of Motion for Final Order Designating Claims Liquidation Date.²² In her Post-Hearing Brief the Deputy Receiver argued that setting a claims liquidation date is within the Commission's discretion and consistent with the Order Setting Final Bar Date.

On June 17, 2015, Noland filed his Closing Argument in Support of Objection to Motion for Final Order Designating Claims Liquidation Date.²³ Noland urged the Commission to deny the proposed Claims Liquidation Date of September 1, 2015, or establish a claims liquidation date sufficiently into the future so that his claim could be resolved, such as December 31, 2016.

²⁰ *Id.* at 79-92.

²¹ Doc. Con. Cen. No. 150620229.

²² Doc. Con. Cen. No. 150620275.

²³ Doc. Con. Cen. No. 150620244.

On June 17, 2015, Regional Medical Center/Trover Clinic Foundation ("Trover") filed a Notice of Joinder²⁴ and a Post-Hearing Brief.²⁵ As an insured of the Companies, Trover argued that it must be provided continuing coverage through its professional liability policies, or provided sufficient reserves to pay a claim in the event a claim is made prior to the expiration of the applicable statute of limitations.²⁶ Trover sought to join in the arguments made by MIGA and Noland on May 6, 2015, in opposition to the Claims Liquidation Date.

On June 22, 2015, the Deputy Receiver filed a Motion to Strike Trover's Joinder to the MIGA and Noland Notices of Objection and Post-Hearing Brief ("Motion to Strike").²⁷ Among other things, the Deputy Receiver argued: (i) the issues raised by the Trover Joinder and Post-Hearing Brief were decided in the Other Matters Hearing in Case No. INS-2003-00024²⁸ and are no longer appealable; (ii) Trover waived its right to object to the Motion and its right to file a post-hearing brief; (iii) Trover offered no explanation for failing to comply with the Commission's Scheduling Order; (iv) Trover had not demonstrated that others would not be prejudiced by its joinder and the requested relief; (v) Trover could not join in MIGA's Objection given that MIGA had already withdrawn it with prejudice; and (vi) Trover had not shown that the proposed Claims Liquidation Date would violate § 38.2-1509 of the Code, or that it would

²⁴ Doc. Con. Cen. No. 150620272. Regional Medical Center/Trover Clinic Foundation is one of the "Kentucky Hospitals." Until it filed its Notice of Joinder and Post-Hearing Brief, Trover had not otherwise participated in this case as a party.

²⁵ Doc. Con. Cen. No. 150620273.

²⁶ Trover identified 10 Proofs of Claim filed in September 2004 relating to potentially compensable events occurring between 1996 and 2002 in which the potential claimant is a minor child or infant. Trover asserted that the statute of limitations had not yet expired on these claims and that they remain non-contingent and unliquidated.

²⁷ Doc. Con. Cen. No. 150630025.

²⁸ The Other Matters Hearing was held on September 17, 2003, and issues raised therein were addressed as part of the Order Setting Final Bar Date.

violate Trover's right to due process. The Deputy Receiver requested that the Commission strike Trover's Notice of Joinder and Post-Hearing Brief. Trover responded on July 17, 2015.²⁹

On July 21, 2015, the Hearing Examiner filed his Report.³⁰ In his Report he found that:

- (1) Trover failed to comply with the procedural requirements in the Commission's Scheduling Order to participate as a party in this proceeding;
- (2) The Deputy Receiver's Motion to Strike Trover's Notice of Joinder and Post-Hearing Brief should be granted;
- (3) The Deputy Receiver's proposed Claims Liquidation Date is reasonable; and
- (4) The Deputy Receiver's Motion for Final Order Designating Claims Liquidation Date should be granted.

The Hearing Examiner recommended that the Commission enter an order adopting his findings, granting the Motion to Strike, granting the Motion for Final Order Designating Claims Liquidation Date, approving the proposed Claims Liquidation Date, and closing the case.

On August 11, 2015, Noland filed his Notice of Withdrawing Objection to Motion for Final Order Designating Claims Liquidation Date with Prejudice, in which he notified the Commission that his claim against the Companies had been resolved by way of settlement.³¹

No comments to the Report were timely filed.

NOW THE COMMISSION, upon consideration of the record, the Hearing Examiner's Report, and the applicable statutes, is of the opinion that the Hearing Examiner's findings and recommendations are reasonable and should be adopted with one modification. The Hearing Examiner recommended that we approve the proposed Claims Liquidation Date of September 1,

²⁹ Doc. Con. Cen. No. 150730171.

³⁰ Doc. Con. Cen. No. 150710033.

³¹ Doc. Con. Cen. No. 150820068.

2015. To permit sufficient time for the Deputy Receiver to prepare and provide notice of the Claims Liquidation Date, we will modify this recommendation by setting October 15, 2015, as the Claims Liquidation Date.

Finally, we note that, since MIGA and Noland have withdrawn their Objections with prejudice, the only remaining Objection is that filed by Trover. With regard to that Objection, we agree with the Hearing Examiner that Trover failed to comply with the procedural requirements in our Scheduling Order and that the Deputy Receiver's Motion to Strike should be granted.

Accordingly, IT IS ORDERED THAT:

- (1) The findings and recommendations contained in the Hearing Examiner's Report are hereby ADOPTED with the modification described herein.
- (2) The Deputy Receiver's Motion to Strike is hereby GRANTED.
- (3) The Deputy Receiver's Motion for Final Order Designating Claims Liquidation Date is hereby GRANTED, provided however, that October 15, 2015, hereby is designated as the Claims Liquidation Date.
- (4) The Deputy Receiver shall post a copy of this Final Order on the Companies' web site at <http://www.reciprocalgroup.com/documents.htm>. The Deputy Receiver shall provide notice of this Final Order and the Claims Liquidation Date in the manner proposed in paragraph 17 of the Deputy Receiver's Motion for Final Order Designating Claims Liquidation Date, including instructions on how to view the Final Order on the Companies' web site and how to obtain a copy of the Final Order by other means. Notice in that manner shall satisfy the requirement to provide notice of this Final Order and of the Claims Liquidation Date.
- (5) This case is dismissed, and the papers filed herein shall be passed to the file for ended causes.

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.

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