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**LOS ANGELES
SUPERIOR COURT**

8 Attorneys for Applicant Insurance Commissioner of the State of California
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10 **SUPERIOR COURT OF CALIFORNIA**
11 **COUNTY OF LOS ANGELES**

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12 INSURANCE COMMISSIONER OF THE
STATE OF CALIFORNIA,
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14 Plaintiff,
15 v.
16 WESTERN STAR INSURANCE
COMPANY, LTD.,
17 Defendant.

CASE NO. BS 030119
**FINAL REPORT AND ACCOUNT OF
ANCILLARY CONSERVATOR AND
LIQUIDATOR FROM AUGUST 29, 1994
TO APRIL 30, 2004; APPLICATION FOR
ORDER (1) SETTLING AND APPROVING
REPORT AND ACCOUNT, (2)
AUTHORIZING ANCILLARY
LIQUIDATOR TO FOREGO CLAIMS AND
NOTICE PROCEDURES; (3) RELEASING
THE COMMISSIONER FROM
LIABILITY; AND (4) TERMINATING
PROCEEDINGS AND DISCHARGING
CONSERVATOR AND LIQUIDATOR;
DECLARATION OF MOHSEN SULTAN**

Hearing Date: September 29, 2004
Time: 9:30 a.m.
Dept: 85
Judge: Hon. Dzintra Janavs

24 **TO THE COURT AND TO ALL INTERESTED PARTIES AND THEIR**
25 **ATTORNEYS OF RECORD:**
26
27

CONFIRMED COPY

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9 SUPERIOR COURT OF CALIFORNIA
10 COUNTY OF LOS ANGELES

12 INSURANCE COMMISSIONER OF THE
STATE OF CALIFORNIA,
13
Plaintiff,
14
v.
15 WESTERN STAR INSURANCE
16 COMPANY, LTD.,
17 Defendant.
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CASE NO. BS 030119

**ORDERS (1) SETTLING AND APPROVING
FINAL REPORT AND ACCOUNT OF
ANCILLARY CONSERVATOR AND
LIQUIDATOR FROM AUGUST 29, 1994
TO APRIL 30, 2004; (2) AUTHORIZING
ANCILLARY LIQUIDATOR TO FOREGO
CLAIMS AND NOTICE PROCEDURES; (3)
RELEASING THE COMMISSIONER
FROM LIABILITY; AND (4)
TERMINATING PROCEEDINGS AND
DISCHARGING CONSERVATOR AND
LIQUIDATOR;**

Hearing Date: September 29, 2004
Time: 9:30 a.m.
Dept: 85
Judge: Hon. Dzintra Janavs

24 The Report and Account of Ancillary Conservator from August 29, 1994 to April 30,
25 2004, and application for Order (1) Settling and Approving Final Report and Account of
26 Ancillary Conservator and Liquidator from August 29, 1994 to April 30, 2004; (2) Authorizing
27 the Applicant as Ancillary Liquidator to decline to continue this insolvency proceeding; to
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1 **PLEASE TAKE NOTICE** that the Insurance Commissioner of the State of California in
2 his capacity as the Liquidator ("Liquidator") of Western Star Insurance Company, Ltd. ("Western
3 Star") submits the following Final Report and Account of Conservator and Liquidator from
4 August 29, 1994, to April 30, 2004.

5 **PLEASE ALSO TAKE NOTICE** that on September 29, 2004, at 9:30 a.m. or as soon
6 thereafter as the matter may be heard in Department 86 of the above-entitled Court, located at
7 111 North Hill Street, Los Angeles, California, the Liquidator will apply and hereby does apply
8 for an Order (1) settling and approving report and account, (2) authorizing ancillary liquidator to
9 forego claims and notice procedures; (3) releasing the commissioner from liability; and (4)
10 terminating proceedings and discharging conservator and liquidator.

11 The application is based on this Notice of Application and Application, the attached
12 Declaration of Mohsen Sultan, all pleadings, records, exhibits and papers on file in this action,
13 and such other evidence and argument as may be presented prior to or at the hearing on the
14 motion.

15 In support of the application, the Liquidator states the following:

16 **BACKGROUND**

17 **The Florida Liquidation**

- 18 1. Applicant is the duly elected Insurance Commissioner of the State of California.
- 19 2. Respondent Western Star is a corporation organized under the laws of Antigua that,
20 without any certificate of authority from the State of Florida or the State of California, transacted
21 the business of insurance from the State of Florida in the State of California, including the sale of
22 insurance policies to, and the collection of insurance premium payments from, insurance
23 consumers in this State.
- 24 3. On June 14, 1994, by an order to which Western Star consented, the Insurance
25 Commissioner of the State of Florida ("Florida Commissioner") was adjudged Domiciliary
26 Receiver for purposes of liquidation of Western Star ("Domiciliary Liquidator") in the Florida
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1 case entitled State of Florida, ex rel. the Department of Insurance of the State of Florida v.
2 Western Star Insurance Company, etc. (Second Judicial Circuit, Leon County No. 94-2188).

3 **The California Liquidation**

4 4. On August 19, 1994, as Domiciliary Liquidator, the Florida Commissioner consented
5 to the California Commissioner's request and stipulated to an order appointing the California
6 Commissioner as Ancillary Receiver and Liquidator of Western Star in this State.

7 5. On August 29, 1994, the California Commissioner was appointed Ancillary
8 Receiver/Liquidator of Western Star in the above-entitled action.

9 **The Florida Litigation**

10 6. On December 8, 1994, the Florida Department of Insurance demanded over \$5.4
11 million from J.P. Morgan Chase, the successor-in-interest to the trustee of Western Star's NAIC
12 Trust for Alien Surplus Lines Insurers.¹ At the request of the Florida Department of Insurance,
13 the California Insurance Commissioner, as Ancillary Liquidator, kept open the Western Star
14 estate to assist in the litigation against Western Star's trustee's successor-in-interest.

15 7. Over the next ten years, intense and protracted litigation ensued, ending on April 29,
16 2004, with the Agreed Final Judgment Approving Settlement Agreement and Resolving All
17 Claims ("Settlement").² A copy of the Settlement is attached as Exhibit B to the Mohsen Sultan
18 Declaration.

19 8. The Settlement provided, inter alia, that Chase would "... cause the sum of \$5.5
20 million to be paid to the Receiver within 35 days after the entry of [the Settlement]."

21 _____
22 ¹ The trustee had executed the NAIC (National Association of Insurance Commissioners) Trust Agreement that
23 stated that the trustee had received and was holding in its "actual and sole possession" \$5.4 million in cash or other
24 assets specifically defined by the Trust Agreement. The purpose of the Trust Agreement was to provide a court-
appointed Receiver with real liquid assets that would be immediately available for payment of claims in the event of
the insurance company's insolvency. The problem with the Western Star trust was that there were no trust assets
whatsoever.

25 ² In the Settlement, the Circuit Court of the Second Judicial Circuit in and for Leon County, Florida, found, inter
26 alia, that "Chase has vigorously contested and denied, and continues to deny, the validity and merit of all the claims
and demands asserted by Receiver."

1 Pursuant to a prior agreement with the Domiciliary Receiver, the administrative expenses for this
2 ancillary proceeding will be paid from the proceeds of the Settlement. However, other than such
3 reimbursement, the California Ancillary Liquidator does not, and will not, have significant
4 assets.

5 **The Interpleader Action**

6 9. On December 2, 1994, plaintiff-in-interpleader First Los Angeles Bank ("FLAB") was
7 granted leave to intervene herein as interpleader and to deposit the principal amount of
8 \$53,614.39 ("principal amount") with the Clerk of this Court.

9 10. On December 13, 1996, FLAB deposited said principal amount herein and was
10 discharged from any further obligations in this action.

11 11. On January 8, 1996, Applicant was authorized to settle the interpleader action, and
12 on February 22, 1996, this Court entered its judgment Pursuant to Stipulation for distribution of
13 the principal amount as follows:

14 (a) \$18,614.39 plus 33 and 1/3 percent of the accrued interest to Applicant;

15 (b) \$35,000.00 plus 66 and 2/3 percent of the accrued interest to Riding Insurance
16 Services.

17 **Florida's Claims Process**

18 12. The Domiciliary Receiver has received court approval to establish a claims bar date
19 of March 31, 2005. The Domiciliary Receiver is in the process of determining the best manner in
20 which to notify California claimants of the claims bar date and the claims process. Among the
21 considerations is publication notice in California newspapers of general circulation. At this time,
22 the Domiciliary Receiver estimates there are fewer than 2,000 (two thousand) California
23 claimants.

24 **California's Claim Process - Insufficient Assets to Complete Claims Procedure**

25 13. With the Chase case settled, Florida no longer has a need for the California
26 Liquidator's assistance. Furthermore, without funds from the Florida liquidator which are no
27 longer anticipated, Applicant possesses insufficient assets to administer a claims procedure or
28

1 otherwise administer the estate. Applicant has therefore concluded that he should not be required
2 to follow the claim procedure set forth in Insurance Code §§ 1021-1033.

3 Account

4 14. As of April 30, 2004, the assets of this estate was *negative* (\$52,228);

5 15. Applicant's estimated administrative budget is attached hereto as Exhibit C to the
6 Mohsen Sultan Declaration and incorporated by reference:

7 **WHEREFORE**, Applicant prays that this Honorable Court issue its Order:

8 1. Approving the Report and Account;


9 2. Authorizing the Applicant as Ancillary Liquidator to decline to continue this
10 insolvency proceeding; to decline to publish notice of its termination because the Domiciliary
11 Receiver will be responsible for informing California claimants of the claims procedure; to waive
12 the requirement that the Applicant proceed in accordance with the claim procedure set forth in
13 Insurance Code sections 1021, et seq.; and absolving the Insurance Commissioner from any
14 liability that might be incurred thereby; and

15 3. Terminating and dismissing this proceeding;

16 4. Granting such other and further relief as the Court deems just and proper.

17
18 Dated: August 31, 2004

19 BILL LOCKYER, Attorney General
20 of the State of California
21 W. DEAN FREEMAN,
22 Lead Supervising Deputy Attorney General
23 MARK P. RICHELSON,
24 Supervising Deputy Attorney General
25 DONALD R. CURRIER,
26 Deputy Attorney General

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28 By: 
DONALD R. CURRIER
Attorneys for Insurance Commissioner of the State of
California

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **PRELIMINARY STATEMENT**

3 This is an application by the Insurance Commissioner of the State of California as
4 Ancillary Liquidator ("Applicant") of Western Star Insurance Company, Ltd. ("Western Star")
5 for an order of this Honorable Court to forego the procedure to publish notice and administer
6 claims against the assets of the liquidation estate.

7 On June 1, 1993, Applicant summarily seized and took possession of Western Star (Ins.
8 Code § 1013). On June 2, 1993, Applicant filed his application with this Court for an order
9 appointing him as Conservator of Western Star (Ins. Code § 1015) whereupon this Court
10 appointed Applicant as Conservator of Western Star.

11 On June 14, 1994, by consent order entered in the Florida case entitled State of Florida,
12 ex rel the Department of Insurance of the State of Florida v. Western Star Insurance Company,
13 etc. (Second Judicial Court, Leon County), the Department of Insurance of the State of Florida
14 was ordered and adjudged Receiver for the purposes of Liquidation of Western Star Insurance
15 Company.

16 The Uniform Insurers Rehabilitation Act has been adopted in the State of California (Ins.
17 Code §§ 1064.1, et seq.) and the State of Florida. (West's F.S.A. §§631.011, 631.031, 631.091,
18 631.141 to 631.201.)

19 On June 14, 1994, the Insurance Commissioner of the State of Florida as Domiciliary
20 Receiver of Western Star stipulated that an order appointing Applicant as Ancillary Receiver of
21 Western Star could be entered by this Court.

22 The Domiciliary Receiver has completed its litigation to recover \$5.4 million from the
23 successor-in-interest of Western Star's trustee. Therefore, there is no reason to keep the ancillary
24 proceeding open any longer.

1 As Ancillary Liquidator, Applicant has determined that Western Star has insufficient
2 assets to complete a procedure to publish notice and administer claims against this estate. (Ins.
3 Code §§ 1021-1033).

4 Consequently, Applicant presents the instant application.

5 ARGUMENT

6 I

7 **APPLICANT HAS DETERMINED THAT WESTERN STAR HAS INSUFFICIENT** 8 **ASSETS TO COMPLETE A NOTICE AND CLAIMS PROCEDURE**

9 Insurance Code § 1021(a) requires the Insurance Commissioner as Liquidator to publish
10 notice requiring the filing of claims against the assets of the estate. Insurance Code §§ 1022-
11 1033 set forth the statutory procedure for the handling of such claims.

12 Applicant, as public officer (Ins. Code § 1059) has determined that Western Star has
13 insufficient assets to complete these notices and claims procedures and that requiring him to do
14 so would be a waste of the assets of this estate. Applicant's determination is entitled to the
15 presumption of regularity (Evid. Code § 664).

16 II

17 **APPLICANT MAY DECLINE TO HANDLE CLAIMS OR TO CONTINUE THIS** 18 **INSOLVENCY PROCEEDING**

19 Insurance Code § 1021(c) also provides that when the Commissioner determines that the
20 estate lacks sufficient assets to permit significant distribution, he may, after providing notice, (1)
21 decline to handle claims or (2) decline to continue the insolvency proceeding and may abandon
22 it.

23 Applicant, as public officer (Ins. Code § 1059) and as the court-appointed Ancillary
24 Liquidator of Western Star has determined that Western Star lacks sufficient assets to permit
25 significant distribution either to persons interested in the assets of this estate or to pay the
26 expenses of administering this estate. Applicant's determination is entitled to the presumption of
27 regularity (Evid. Code § 664). Further, Applicant has no assets and has incurred over \$52,000 in
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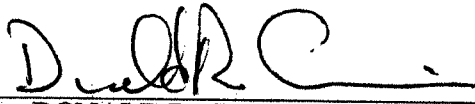
1 costs for which he will not be reimbursed. Therefore, Applicant cannot pay his expenses and
2 cannot distribute fees.

3 **CONCLUSION**

4 For all the foregoing reasons, Applicant Insurance Commissioner of the State of
5 California respectfully requests that this Honorable Court issue its order authorizing Applicant to
6 forego the statutory procedure (Ins. Code § 1021) to notify and pay potential claimants to the
7 assets of Western Star.

8
9 Dated: August 31, 2004

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