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10 SUPERIOR COURT OF CALIFORNIA

11 COUNTY OF FRESNO

12
13 **INSURANCE COMMISSIONER OF THE STATE
OF CALIFORNIA,**

14 Applicant,

15 v.

16 **ALISTAR INSURANCE COMPANY, a California
domiciled company,**

17 Respondent.
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FILED

OCT 24 2002

FRESNO COUNTY SUPERIOR COURT

By _____ 98A-DEPUTY

Case No. 02 CE CG 01214

**ORDER ON INSURANCE
COMMISSIONER'S
APPLICATION FOR ORDER
OF LIQUIDATION**

Date: October 24, 2002

Time: 8:30 a.m.

Dept.: 98 A

**Judge: Honorable Stephen J.
Kane**

Trial date: None set

Action filed: April 22, 2002

22 GOOD CAUSE APPEARING FROM THE COMMISSIONER'S VERIFIED
23 APPLICATION, THIS COURT MAKES THE FOLLOWING FINDINGS:

- 24 1. Respondent is insolvent.
- 25 2. It would be futile for the Commissioner to continue to proceed as Conservator of
- 26 Respondent.
- 27 3. There exist sufficient factual and legal grounds for the Commissioner to liquidate and
- 28 wind up the business of Respondent in a manner consistent with the provisions of this Order.

1 WHEREFORE, GOOD CAUSE APPEARING, THIS COURT MAKES THE
2 FOLLOWING ORDERS:

3 1. The Commissioner's status as Conservator is terminated, and he is appointed as
4 Liquidator of Respondent, as set forth in Insurance Code §1016, and directed as Liquidator to
5 liquidate and wind up the affairs of Respondent, to conduct the business of Respondent, or so
6 much as thereof may seem appropriate, to pay or defer payment of all proper claims and
7 obligations against Respondent accruing prior to or subsequent to his appointment as Liquidator
8 of Respondent and to act in all ways and exercise all powers necessary for the purpose of
9 carrying out such order.

10 2. The Commissioner as Liquidator is authorized to take possession of all the assets of
11 Respondent including books, records and property, both real and personal, wheresoever situated.

12 3. The Commissioner as Liquidator or his successor in office, in his official capacity as
13 Liquidator, is vested with title to all property and assets of Respondent, both those presently in
14 Respondent's possession and those which may be discovered hereafter, wheresoever situated. All
15 persons are enjoined from interfering with the Commissioner's possession and title thereto.

16 4. The Commissioner as Liquidator is authorized to pay for his costs in bringing and
17 maintaining this action, and such other actions as are necessary to carry out his functions as
18 Liquidator, out of the funds and assets of Respondent; and if there are insufficient funds, to pay
19 for his costs out of the Insurance Fund, pursuant to Insurance Code section 1035.

20 5. The Commissioner as Liquidator is authorized to initiate such equitable or legal actions
21 or proceedings in this or other states as may appear to him necessary to carry out his functions as
22 Liquidator.

23 6. The Commissioner as Liquidator is authorized to appoint and employ special deputies,
24 estate managers, other professionals, clerks and assistants and to give each of them such power
25 and authority as he may deem necessary, and the Commissioner as Liquidator is authorized to
26 compensate these persons from the assets of Respondent as he may deem appropriate.

27 7. The Commissioner as Liquidator is authorized to divert, take possession of and secure
28 all mail of Respondent, in order to screen such mail, and to effect a change in the rights to use

1 any and all post office boxes and other mail collection facilities used by Respondent.

2 8. The Commissioner as Liquidator is authorized to pay all reasonable costs of operating
3 Respondent (including direct and allocated direct costs, direct and allocated general and
4 administrative costs and overhead, and other allocated costs) out of funds and assets of
5 Respondent; and if there are insufficient funds, to pay his costs out of the Insurance Fund,
6 pursuant to Insurance Code §1035.

7 9. The Commissioner as Liquidator is authorized to invest Respondent's assets in such a
8 manner as to him may seem suitable for the best interest of Respondent's creditors which funds
9 are not immediately distributable to Respondent's creditors. No investment or reinvestment shall
10 be made which exceeds the sum of \$100,000 without first obtaining permission of this Court,
11 except the Commissioner may invest or reinvest in excess of \$100,000, but no more than the sum
12 of \$2,000,000 without prior approval if such investments are made pursuant to the attached
13 investment guidelines, a true and correct copy of which is attached hereto as Exhibit "B". Further,
14 the Commissioner shall file quarterly reports of such investments with the Court (with notice to
15 all interested parties), such reports to be filed within 45 days of the end of each quarter. The first
16 such report shall be filed no later than February 15, 2003. Subsequent reports shall be filed no
17 later than 45 days after the end of each fiscal quarter in which investments are made pursuant to
18 the authority granted hereunder.

19 10. The Commissioner as Liquidator is authorized, pursuant to Insurance Code §1037,
20 subsection (g), and notwithstanding the provisions of 9. above, to invest and reinvest all assets in
21 a manner he deems to be in the best interest of the creditors of the estate, including investing and
22 reinvesting assets through an investment pool consisting exclusively of assets from conserved
23 estates. To the extent that the Commissioner as Liquidator invests and reinvests through such an
24 investment pool, such investments and re-investments may exceed \$100,000.

25 11. The Commissioner as Liquidator is authorized to pay as expenses of administration all
26 expenses heretofore incurred by the Commissioner as Conservator which are presently unpaid,
27 and the Commissioner as Liquidator is authorized to pay, upon presentation, the full amount of
28 any checks or drafts which have been issued by him, in his capacity as Conservator, and which

1 are outstanding.

2 12. The Commissioner as Liquidator is authorized, pursuant to Insurance Code §1037,
3 subsection (d), to dispose of any excess property of Respondent by any commercially reasonable
4 method, including, but not limited to, sales at public auctions or sales in bulk to the high bidder
5 (provided at least three (3) independent dealers in the kind of property sold are given notice of
6 the opportunity to bid).

7 13. The Commissioner as Liquidator is authorized to assume or reject, or to modify, any
8 executory contracts, including without limitation, any lease, rental or utilization contract or
9 agreement (including any schedule to any such contract or agreement), and any license or other
10 arrangement for the use of computer software of business information systems, to which
11 Respondent is a party or as to which Respondent agrees to accept an assignment of such contract;
12 the Commissioner as Liquidator is directed to effect any such assumption or rejection or
13 modification of any executory contract not later than within 120 days after the entry of this order,
14 unless such date is extended by application to and further order of this Court; all executory
15 contracts that are not expressly assumed by the Commissioner as Liquidator shall be deemed
16 rejected; any party to a contract that is rejected by the Commissioner as Liquidator pursuant to
17 this order shall be permitted to file a proof of claim against the liquidation estate, which claim
18 shall be treated in accordance with Insurance Code §1010, et seq.

19 14. Respondent and all former and present officers, directors, agents, and employees of
20 Respondent are directed to deliver to the Commissioner as Liquidator all assets, books, records,
21 equipment, and other property of the Respondent wheresoever situated.

22 15. All funds and assets, including certificates of deposit, bank deposits and mutual fund
23 shares, of Respondent, in various financial depository institutions, including banks, savings and
24 loan associations, industrial loan companies, mutual funds or stock brokerages, wheresoever
25 situated, are directed to be vested in the Commissioner as Liquidator and subject to withdrawal
26 upon his order only.

27 16. All persons who maintain records for Respondent, pursuant to written contract or any
28 other agreement, are directed to maintain such records and to deliver them to the Commissioner

1 as Liquidator upon his request.

2 17. All agents of Respondent and all brokers who have done business with Respondent are
3 directed to make remittances of all funds collected by them or in their hands directly to the
4 Commissioner as Liquidator. This obligation to remit collected funds is continuing in nature.

5 18. All persons having possession of any lists of policyholders or escrow holders of
6 Respondent are directed to deliver all such lists to the Commissioner as Liquidator. All persons
7 are enjoined from using any such lists or any information contained therein without the consent
8 of the Commissioner as Liquidator.

9 19. Respondent and its respective officers, directors, agents, servants, employees,
10 successors, assigns, affiliates, and other persons or entities under their control and all persons or
11 entities in active concert or participation with them, and each of them, are directed to turn over to
12 the Commissioner as Liquidator records, documentation, charts and/or descriptive material of all
13 funds, assets, property (owned beneficially or otherwise), and all other assets of Respondent
14 wherever situated, and all books and records of accounts, title documents and other documents in
15 their possession or under their control, which relate, directly or indirectly, to assets or property
16 owned by or held by Respondent or to the business or operations of Respondent.

17 20. All insurance policies issued by Respondent shall be terminated and canceled effective
18 thirty (30) days following the issuance of this order, and the Commissioner as Liquidator shall
19 notify promptly all policyholders and all bail bond or other surety agents of such policy
20 termination and cancellation by First Class Mail at the last known address of such policyholders;
21 in addition, the Commissioner as Liquidator, in his sole discretion, is authorized to terminate and
22 cancel any policies issued by Respondent that are not covered by the preceding sentence or that
23 were issued by a fronting insurer and reinsured, in whole or in part, by Respondent.

24 21. All prior injunctions and other orders of this Court, except to the extent expressly
25 modified herein, are reaffirmed and remain in full force and effect; all powers and authority
26 granted to the Commissioner as Liquidator under this order are in addition to and not in
27 limitation of the powers of the Commissioner as Liquidator under the Insurance Code and any
28 other statutory or applicable case law.

1 22. The rights and liabilities of claimants, creditors, shareholders, policyholders, escrow
2 holders and all other persons interested in the assets of Respondent, including the State of
3 California, are fixed as of the date of the entry of this order.

4 23. All funds and accounts in the name of Respondent, or the Commissioner as
5 Conservator, in various banks or any other institutions wheresoever situated are vested in the
6 Commissioner as Liquidator and subject to withdrawal at his direction only. This order does not
7 convert funds held in a fiduciary capacity to general assets of the Liquidator.

8 24. All persons are enjoined, except with leave of this Court issued after a hearing in which
9 the Commissioner as Liquidator has received reasonable notice, from obtaining preferences,
10 judgments, attachments or other liens, or making any levy against Respondent or its assets or
11 property, and from executing or issuing or causing the execution or issuance of any court
12 attachment, subpoena, replevin, levy, execution, or other process for the purpose of impounding
13 or taking possession of or interfering with or creating or enforcing a lien upon any property or
14 assets owned or in the possession of Respondent or its affiliates, or the Liquidator appointed
15 herein, wheresoever situated and from doing any act interfering with the conduct of said business
16 by the Commissioner as Liquidator.

17 25. All persons are enjoined, except by leave of this Court obtained after reasonable notice
18 to the Commissioner as Liquidator, from accelerating the due date of any obligation or claimed
19 obligation; exercising any right of set-off; taking, retaining, retaking or attempting to retake
20 possession of any real or personal property; withholding or diverting any rent or other obligation;
21 doing any act or other thing whatsoever to interfere with the possession of or management by the
22 Commissioner as Liquidator and of the property and assets, owned or controlled by Respondent
23 or in the possession of Respondent or to in any way interfere with said Commissioner as
24 Liquidator or to interfere in any manner during the pendency of this proceeding with the
25 exclusive jurisdiction of this Court over Respondent.

26 26. Respondent, its officers, directors, governors, agents, and employees are enjoined from
27 transacting any of the business of Respondent, whether in the State of California or elsewhere, or
28 from disposing of, or assisting any person in the transfer or alienation of, the property or assets of

1 Respondent, until further order of this Court.

2 27. All persons are enjoined from instituting, prosecuting or maintaining any action at law
3 or suit in equity, including but not limited to actions or proceedings to compel discovery or
4 production of documents or testimony and matters in arbitration, except for matters before the
5 Workers' Compensation Appeals Board, against Respondent or against the Commissioner as
6 Liquidator of Respondent, and from attaching, executing foreclosure upon, redeeming of or
7 taking any other legal proceedings against, any of the property or assets of Respondent, and from
8 doing any act interfering with the conduct of said business by the Commissioner as Liquidator,
9 except upon order from this Court obtained after reasonable notice to the Commissioner as
10 Liquidator.

11 28. Any and all provisions of any agreement entered into by and between any third party
12 and Respondent including, by way of illustration, but not limited to, the following types of
13 agreements (as well as any amendments, assignments, or modifications thereto): financial
14 guarantee bonds, promissory notes, loan agreements, security agreements, deeds of trust,
15 mortgages, indemnification agreements, subrogation agreements, subordination agreements,
16 pledge agreements, assignments of rents or other collateral, financial statements, letters of credit,
17 leases, insurance policies, guaranties, escrow agreements, management agreements, real estate
18 brokerage and rental agreements, servicing agreements, attorney agreements, consulting
19 agreements, easement agreements, license agreements, franchise agreements, or employment
20 contracts that provide in any manner that selection, appointment or retention of a conservator, or
21 liquidator or trustee by any court, or entry of an order such as hereby made, shall be deemed to be
22 or otherwise operate as a breach, violation, event of default, termination, event of dissolution,
23 event of acceleration, insolvency, bankruptcy, or liquidation, shall be stayed, and the assertion of
24 any and all rights, remedies relating thereto shall also be stayed and barred, except as otherwise
25 ordered by this Court, and this Court shall retain jurisdiction over any cause of action that has
26 arisen or may otherwise arise under any such provision.

27 29. All persons are enjoined from interfering with the possession, title and rights of the
28 Commissioner as Liquidator, in and to the property and assets of Respondent, and from

1 interfering with the conduct of the Commissioner as Liquidator in the handling and disposition of
2 assets of Respondent, and from interfering with the conduct of the liquidation and the winding up
3 of the business of Respondent, except upon order of this Court obtained after reasonable notice to
4 the Commissioner as Liquidator.

5 30. All persons are enjoined from waste of assets of Respondent.

6 31. Any and all claims against Respondent (except those policyholder claims already
7 pending against Respondent, which are hereby deemed filed with the Liquidator, who shall
8 maintain a list of such claims), including those which in any way affect or seek to affect any of
9 the assets of Respondent, wherever or however such assets may be owned or held, must be filed
10 by no later than July 30, 2003, (the "Claims Bar Date"), together with proper proof thereof, in
11 accordance with the provisions of Insurance Code §1010, et seq., including, but not limited to
12 §1023, and any claim not filed by the Claims Bar Date is conclusively deemed forever waived.

13 DATED:

14 10-24-02

STEPHEN J. KANE

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16 STEPHEN J. KANE
Judge of the Superior Court