

ENDORSED
FILED
San Francisco County Superior Court

DEC 28 2011

CLERK OF THE COURT
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Deputy Clerk

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9
10 COUNTY OF SAN FRANCISCO

11
12 **INSURANCE COMMISSIONER OF THE**
STATE OF CALIFORNIA,

13 Applicant,

14 v.

15
16 **MUNICIPAL MUTUAL INSURANCE**
COMPANY,

17 Respondent.

Case No. CPF-07-507033

INSURANCE COMMISSIONER'S
APPLICATION FOR ORDERS
(1) APPROVING THE FINAL REPORT
AND ACCOUNTING;
(2) APPROVING THE ASSIGNMENT OF
REINSURANCE RECOVERABLES TO
THE CALIFORNIA INSURANCE
GUARANTEE ASSOCIATION; AND
(3) APPROVING A FINAL
DISTRIBUTION OF ASSETS OF
MUNICIPAL MUTUAL INSURANCE
COMPANY

Date: January 31, 2012
Time: 9:30 a.m.
Dept: 302
Judge: Hon. Harold E. Kahn
Trial Date: NONE
Action Filed: February 14, 2007

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24 Applicant Dave Jones, Insurance Commissioner of the State of California
25 ("Commissioner") in his capacity as Liquidator of Municipal Mutual Insurance Company
26 ("MMIC"), respectfully states as follows:

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2 **FACTUAL BACKGROUND**

3 Respondent MMIC was a corporation duly organized and existing under, and by virtue of,
4 the laws of the State of California. Under a Certificate of Authority issued by the Commissioner
5 in his regulatory capacity, MMIC was authorized to transact the following types of insurance
6 business: Liability, Workers' Compensation, and Miscellaneous.

7 In 2003, the Commissioner in his regulatory capacity conducted a financial examination of
8 MMIC and determined that MMIC had unfavorable operating trends and that there was
9 significant deterioration of MMIC's statutory surplus. (Declaration of John Battle at ¶ 3.)

10 In August 2003, the Commissioner and MMIC entered into a Letter Agreement of
11 Regulatory Oversight whereby the Commissioner and MMIC agreed to a series of financial
12 restrictions on MMIC in order to extend MMIC's ability to continue to pay approved claims in
13 full. (Declaration of John Battle at ¶ 4.)

14 In October 2006, when the Commissioner determined that MMIC was insolvent and that it
15 would be futile for MMIC to continue to conduct business, the Commissioner and MMIC
16 stipulated to an Entry of Order Appointing Liquidator and Related Orders. (Declaration of John
17 Battle at ¶ 5.)

18 Upon such stipulation, and effective on October 31, 2006, the Solano County Superior
19 Court appointed the Commissioner as Liquidator of MMIC and directed that the Commissioner
20 liquidate and wind up the affairs of MMIC and to act in all ways and exercise all powers
21 necessary for the purpose of carrying out the Court's order. Attached as Exhibit A to the
22 Declaration of John Battle is a copy of the Court's Order. (Declaration of John Battle at ¶ 6.)¶

23 Upon MMIC's liquidation and a finding of its insolvency, the California Insurance
24 Guarantee Association¹ became responsible for paying "covered claims." (Insurance Code
25 § 1063, et seq.)

26
27 ¹ MMIC issued policies only in California. Therefore, the only guaranty association that
28 paid claims on behalf of MMIC was the California Insurance Guarantee Association.

1 On December 19, 2006, the Solano County Superior Court granted the Commissioner's
2 motion to transfer the proceedings from Solano County to San Francisco County, pursuant to
3 Insurance Code section 1040. (Declaration of John Battle at ¶ 7.)

4 LIQUIDATOR'S FINAL REPORT AND ACCOUNTING

5 The Commissioner has now completed the liquidation of MMIC. All assets have been
6 marshaled and all administrative tasks have been completed. (Declaration of John Battle at ¶ 8.)

7 There was only one Class 2 claim (a claim from the California Insurance Guarantee
8 Association ("CIGA")). The CIGA claim has been fully adjusted and approved. With the
9 exception of one reinsurance recoverable, which the Commissioner proposes to assign to the sole
10 Class 2 claimant, CIGA (see below), all reinsurance has been collected and/or written off. All
11 assets have been marshaled and all administrative tasks have been completed. (Declaration of
12 John Battle at ¶ 8.)

13 A. Financial Statements

14 The financial statements for MMIC for the period October 31, 2006 (date of liquidation) to
15 September 30, 2011, are attached as Exhibit A to the supporting Declaration of Edward Hahn,
16 Vice President Finance – Estates of the Commissioner's Conservation & Liquidation Office.
17 These financial statements include the Statement of Assets and Liabilities and Statement of
18 Changes in Net Assets.

19 In summary, these financial statements show that as of September 30, 2011, MMIC had
20 assets in the total amount of \$5,129,053 and liabilities in the total amount of \$11,651,775, which
21 results in a net deficiency of \$6,522,722. (Declaration of Edward Hahn at ¶ 3, and Exhibit A
22 thereto).

23 In summary, from the date of liquidation to September 30, 2011, the MMIC estate incurred
24 the following expenses:

25	Legal and consulting fees:	\$96,958
26	General and administrative:	\$22,490
27	Allocated overhead:	\$430,727

28 (Declaration of Edward Hahn at ¶ 3.)

1 **B. Claims**

2 Due to MMIC's severely limited assets, the Commissioner filed a motion with this Court
3 pursuant to section 1021, subdivision (c)(1), seeking authorization to provide a modified claims
4 process for persons that might have an interest in MMIC's assets. On April 24, 2007, this Court
5 authorized a procedure whereby the Commissioner solicited and accepted claims only from Class
6 2 claimants, i.e., CIGA and policyholders.

7 The Proofs of Publication of the notice of the modified claims process is attached at Exhibit
8 B to the Declaration of John Battle. The only proof of claim that was filed was from CIGA, and
9 its final claim was approved for \$9,155,390.04.

10 **C. Reinsurance**

11 Over the course of the liquidation, October 31, 2006 to September 30, 2011, the
12 Commissioner collected the following reinsurance:

13

14 REINSURER	14 SOURCE	14 COLLECTED
15 LDG Re	15 Billings	15 \$1,408,531.10
16 LDG Re	16 Commutation	16 2,100,000.00
17 CAN	17 Commutation	17 1,250,000.00
18		18 \$4,758,531.10

19 (Declaration of Dick Oshita at ¶ 3.)

20 **1. Assignment of the only Remaining Reinsurance Recoverable to CIGA**

21 As of September 30, 2011, there remained one reinsurer, ALEA North America Insurance
22 Company ("ALEA"), whose liabilities to MMIC have not been fully extinguished. The
23 Commissioner has not been successful in completing an equitable commutation (settlement) with
24 ALEA. The MMIC policies that ALEA reinsured were workers' compensation policies, which
25 can have very "long tails," i.e., take many years to close. Therefore, without a commutation with
26 ALEA, the Commissioner would have to continue to bill ALEA for many more years before the
27 reinsurance is fully collected. (Declaration of Dick Oshita at ¶ 4.) However, keeping the MMIC
28

1 estate open for many more years would cause the estate to incur additional administrative
2 expenses, which would ultimately decrease the assets available to distribute to CIGA, the sole
3 approved Class 2 claimant.

4 In order to avoid the unnecessary administrative expenses of keeping the MMIC liquidation
5 open for many more years, and subject to this Court's approval, the Commissioner and CIGA
6 have entered into an Assignment and Release Agreement whereby the Commissioner assigns to
7 CIGA all rights and entitlements of MMIC in connection with the reinsurance contract between
8 MMIC and ALEA. The Assignment and Release Agreement will allow the Commissioner to
9 close the MMIC estate at this time instead of waiting many years (in order to collect the full
10 reinsurance from ALEA). (Declaration of John Battle at ¶ 10.)

11 The current value of the reinsurance recoverable against ALEA is \$227,088. (Declaration
12 of Dick Oshita at ¶ 5.)

13 A true and correct copy of the Assignment and Release Agreement is attached as Exhibit C
14 to the Declaration of John Battle.

15 PROPOSED FINAL DISTRIBUTION OF ASSETS

16 A. Closing Budget

17 As of September 30, 2011, MMIC had \$5,129,053 in available assets. Subject to this
18 Court's authorization, the Commissioner proposes to reserve \$84,155 to pay Administrative
19 Expenses (Class 1 expenses) for the next three years. These Administrative Expenses include
20 storage and eventual destruction of records, legal expenses, audit expenses, tax consultation and
21 preparation, and indirect expenses. (Declaration of Edward Hahn at ¶ 4.)

22 B. Records Retention and Eventual Destruction of Records

23 The Commissioner proposes to maintain some of MMIC's records in the Conservation &
24 Liquidation Office's imaged databases. The majority of records will be maintained in hardcopy
25 format at a storage warehouse. Subject to this Court's authorization, the Commissioner proposes
26 to maintain these records for three (3) years from the date of the Court's order and thereafter will
27 destroy said records – except for those records necessary for examination or audit by the
28 Department of Finance or other auditor. (Declaration of John Battle at ¶ 11.)

1 **C. Proposed Final Distribution to CIGA**

2 CIGA's final approved claim is for \$9,155,390.04. (Declaration of John Battle at ¶ 12.)
3 After subtracting the closing budget from currently available assets, and subject to this Court's
4 authorization, the Commissioner proposes to distribute the remaining \$4.8 million to CIGA.

5 The current distribution of \$4.8 million plus the current value of the reinsurance
6 recoverable from ALEA equals approximately \$5,027,088, which will be the total distribution of
7 MMIC assets to CIGA. (Declaration of Edward Hahn at ¶ 5.)

8 WHEREFORE, the Liquidator prays for an order that provides as follows:

- 9 1. The Final Report and Account of Liquidator for the period from October 31, 2006
10 through September 30, 2011 is settled and approved;
- 11 2. The Commissioner as Liquidator is authorized to retain the sum of \$84,155 for
12 payment of administrative expenses incurred by the Liquidator from and after October 1, 2011 for
13 administrative and closing costs, and the Liquidator is authorized to pay any excess closing and
14 administrative costs out of the funds appropriated for the maintenance of the Department of
15 Insurance. A report to the Court of the expenditure of these funds shall not be required;
- 16 3. The Liquidator is authorized to enter into the Assignment and Release Agreement
17 with CIGA whereby all rights and entitlements of the reinsurance contract between MMIC and
18 ALEA are assigned to CIGA;
- 19 4. The Liquidator is authorized to distribute to the one approved Class 2 claimant,
20 CIGA, approximately \$4.8 million (this approximation is based on any accrued income or losses
21 resulting from a change in value of the pooled assets);
- 22 5. The Liquidator is authorized to maintain all records of Respondent Municipal Mutual
23 Insurance Company for three years either in an imaged database or in hardcopy format and
24 thereafter the Liquidator is authorized to destroy all records of Respondent except for those
25 records necessary for examination by the Department of Finance or other auditors of the
26 Liquidator's books and records pursuant to Insurance Code section 1061;
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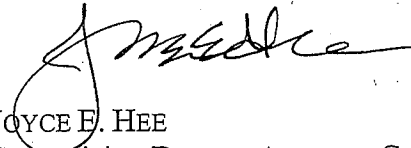
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6. The Liquidator is authorized to take any action necessary to accomplish the purpose of this Order. The MMIC estate is closed, and the Commissioner as Liquidator shall be discharged as Liquidator upon the filing of a Declaration of Compliance.

Dated: December 23, 2011

Respectfully Submitted,

KAMALA D. HARRIS
Attorney General of California


JOYCE E. HEE
Supervising Deputy Attorney General
Attorneys for Applicant
Insurance Commissioner
of the State of California

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[PROPOSED] ORDER

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN FRANCISCO

12 INSURANCE COMMISSIONER OF THE
13 STATE OF CALIFORNIA,

14 Applicant,

15 v.

16 MUNICIPAL MUTUAL INSURANCE
17 COMPANY,

18 Respondent.

Case No. CPF-07-507033

(Proposed)

**ORDER (1) APPROVING FINAL
REPORT AND ACCOUNTING; (2)
APPROVING THE ASSIGNMENT OF
REINSURANCE RECOVERABLES TO
THE CALIFORNIA INSURANCE
GUARANTEE ASSOCIATION; AND (3)
APPROVING A FINAL DISTRIBUTION
OF ASSETS OF MUNICIPAL MUTUAL
INSURANCE COMPANY**

20 Date: January 31, 2012
21 Time: 9:30 a.m.
22 Dept: 302
23 Judge: Hon. Harold E. Kahn
24 Trial Date: NONE
25 Action Filed: February 14, 2007

26 The matter of the application of the Insurance Commissioner of the State of California as
27 Liquidator of Respondent Municipal Mutual Insurance Company for this court's order
28 ("Application of Order") (1) approving the final report and accounting, (2) approving the
assignment of reinsurance recoverables to the California Insurance Guarantee Association, and
(3) approving a final distribution of assets of Municipal Mutual Insurance Company, came on

1 regularly for a hearing on January 31, 2012, in Department 302 of the above-entitled court, the
2 Honorable Harold E. Kahn, Judge Presiding. Joyce E. Hee, Supervising Deputy Attorney
3 General, appeared on behalf of applicant Insurance Commissioner of the State of California, as
4 Liquidator of Respondent Municipal Mutual Insurance Company ("MMIC"). There was no
5 opposition to the Insurance Commissioner's application.

6 The Court, having read and considered the Application for Order filed by the Insurance
7 Commissioner as Liquidator of MMIC, and good cause appearing therefore,

8 IT IS HEREBY ORDERED that:

- 9 1. The Insurance Commissioner's application is granted;
- 10 2. The Final Report and Account of Insurance Commissioner as Liquidator for
11 MMIC for the period from October 31, 2006 through September 30, 2011 is settled and approved;
- 12 3. The Insurance Commissioner as Liquidator is authorized to retain the sum of
13 \$84,155 for payment of administrative expenses incurred by the Liquidator from and after
14 October 1, 2011 for administrative and closing costs, and the Liquidator is authorized to pay any
15 excess closing and administrative costs out of the funds appropriated for the maintenance of the
16 Department of Insurance. A report to the Court of the expenditure of these funds shall not be
17 required;
- 18 4. The Insurance Commissioner as Liquidator is authorized to enter into the
19 Assignment and Release Agreement with California Insurance Guarantee Association ("CIGA")
20 whereby all rights and entitlements of the reinsurance contract between MMIC and ALEA North
21 America Insurance Company are assigned to CIGA;
- 22 5. The Insurance Commissioner as Liquidator is authorized to distribute to the one
23 approved Class 2 claimant, CIGA, approximately \$4.8 million (this approximation is based on
24 any accrued income or losses resulting from a change in value of the pooled assets);
- 25 6. The Insurance Commissioner as Liquidator is authorized to maintain all records
26 of Respondent MMIC for three years either in an imaged database or in hardcopy format and
27 thereafter the Liquidator is authorized to destroy all records of Respondent except for those
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records necessary for examination by the Department of Finance or other auditors of the Liquidator's books and records pursuant to Insurance Code section 1061;

7. The Insurance Commissioner as Liquidator is authorized to take any action necessary to accomplish the purpose of this Order. The MMIC estate is closed, and the Commissioner as Liquidator shall be discharged as Liquidator upon the filing of a Declaration of Compliance.

IT IS SO ORDERED.

Dated: _____

JUDGE OF THE SUPERIOR COURT

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DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **Insurance Commissioner v. Municipal Mutual Insurance Company**
Case No.: **San Francisco County Superior Court Case No. CPF-07-507033**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On December 23, 2011, I served the attached

INSURANCE COMMISSIONER'S APPLICATION FOR ORDERS (1) APPROVING THE FINAL REPORT AND ACCOUNTING; (2) APPROVING THE ASSIGNMENT OF REINSURANCE RECOVERABLES TO THE CALIFORNIA INSURANCE GUARANTEE ASSOCIATION; AND (3) APPROVING A FINAL DISTRIBUTION OF ASSETS OF MUNICIPAL MUTUAL INSURANCE COMPANY

[PROPOSED] ORDER

by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 1515 Clay Street, 20th Floor, Oakland, CA 94612-0550, addressed as follows:

Kyra Leary, Director
LDG Reinsurance Corporation
401 Edgewater Place, Suite 400
Wakefield, MA 01880

C. Guerry Collins, Esq.
Lord, Bissel & Brook
300 South Grand Avenue 8th Floor
Los Angeles, CA 90071

California Insurance Guarantee Association
P. O. Box 16860
Beverly Hills, CA 90209-3319

Suzanne Fetter
SVP of Claims and Head of Office
ALEA North America Insurance Office
55 Capital Boulevard, Corporate Ridge
Rocky Hill, CT 06067

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on December 23, 2011, at Oakland, California.

Lydia Banaga
Declarant

Lydia Banaga
Signature