



FILED
San Francisco County Superior Court

MAY - 8 2001

GORDON PARKIN, Clerk
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MAY - 8 2001

GORDON PARKIN, Clerk
San Francisco County Superior Court
BY: M. E. [Signature]
Clerk

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8 Attorneys for Applicant Insurance Commissioner of the State of California

Manuelita Echeverria

10 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF SAN FRANCISCO - UNLIMITED JURISDICTION

13 INSURANCE COMMISSIONER OF THE STATE
14 OF CALIFORNIA,

Applicant,

v.

16 HIH AMERICA COMPENSATION & LIABILITY
17 INSURANCE COMPANY, a California domiciled
18 insurance company,

Respondent.

Case No. 320049

ORDER APPOINTING
LIQUIDATOR AND
RESTRAINING ORDERS
~~PROPOSED~~ up

Date: May 8, 2001
Time: 9:30 a.m.
Place: Dept. 301

21 On May 8, 2001, the Amended Verified Application for Order Appointing
22 Liquidator and Restraining Orders of applicant Insurance Commissioner of the State of
23 California ("Commissioner") over respondent HIH America Compensation & Liability Insurance
24 Company ("Respondent") came on regularly for hearing in Department 301 of the San Francisco
25 County Superior Court. Deputy Attorneys General David Lew and Anne Michelle Burr appeared
26 on behalf of Applicant. No appearance was made on behalf of Respondent.

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1 special deputies, clerks and assistants and to give each of them such power and authority as he
2 deems necessary, and is authorized to compensate them from the assets of Respondent, or from
3 such other non-conservatorship funds as are lawfully available, which as to him shall be
4 determined to be appropriate.

5 6. Applicant, as Liquidator, is authorized to invest Respondent's assets as he
6 deems to be in the best interests of this liquidation estate, and to pay for his costs in bringing and
7 maintaining this and other actions necessary to carry out his functions as Liquidator of
8 Respondent from the assets of Respondent, and if there are insufficient funds, is authorized to
9 pay for his costs out of the Insurance Fund, pursuant to Insurance Code section 1035.

10 7. The Liquidator is authorized to divert, take possession of and secure all mail of
11 Respondent in order to screen such mail, and to effect a change in the rights to use any and all
12 post office boxes and other mail collection facilities used by Respondent.

13 8. The Commissioner as Liquidator is authorized to pay for his costs in bringing
14 and maintaining this action, and such other actions as are necessary to carry out his functions as
15 Liquidator, out of the funds and assets of Respondent.

16 9. The Commissioner as Liquidator is authorized, pursuant to Insurance Code
17 section 1037(g), to invest and reinvest all assets in a manner he deems to be in the best interest of
18 the creditors of the estate, including investing and reinvesting assets through an investment pool
19 consisting exclusively of assets from conserved estate. To the extent that the Commissioner
20 invests and reinvests through such an investment pool, such investments and reinvestments may
21 exceed \$100,000.

22 10. The Liquidator is authorized to assume or reject, or modify, any executory
23 contract, including without limitation, any lease, rental or utilization contract or agreement
24 (including any schedule to any such contract or agreement), and any license or other arrangement
25 for the use of computer software or business information systems, to which Respondent is a party
26 or as to which Respondent agrees to accept an assignment of such contract. Any such
27 assumption or rejection or modification of any executory contract shall be effected by the
28 Liquidator not later than within 120 days after the entry of the requested Order, unless such date



1 arrangement for the use of computer software or business information systems, to which
2 Respondent is a party or as to which Respondent agrees to accept an assignment of such contract.
3 Any such assumption or rejection or modification of any executory contract shall be effected by
4 the Liquidator not later than within 120 days after the entry of this Order, unless such date is
5 extended by application to and further order of this Court. All executory contracts that are not
6 expressly assumed by the Commissioner shall be deemed rejected. Any party to a contract that is
7 rejected by the Commissioner pursuant to this Order shall be permitted to file a proof of claim
8 against the liquidation estate, which claim shall be treated in accordance with Insurance Code
9 section 1010, *et seq.*

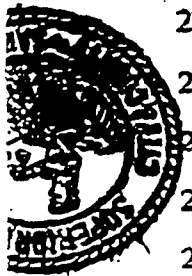
10 11. Pursuant to Insurance Code section 1037, subdivision (d), the Liquidator is
11 authorized to dispose of any excess property of Respondent by any commercially reasonable
12 method, including, but not limited to, sales at public auctions, sales in bulk to the high bidder
13 (provided at least three (3) bids are obtained from independent dealers in the kind of property
14 sold).

15 CLAIMANTS, CREDITORS AND POLICYHOLDERS

16 12. The rights and liabilities of claimants, creditors, and all other persons
17 interested in the assets of Respondent, including the State of California, shall be fixed as of the
18 date of entry of the order herein prayed for.

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

26 14. All insurance agents working on behalf of Respondent, and all insurance
27 brokers who have done or are doing business on behalf of or with Respondent, are directed to
28 make all remittances of funds collected by them or in their hands directly to the Commissioner as



1 Liquidator, forthwith. This obligation to remit collected funds is continuing in nature.

2 INJUNCTIONS AND OTHER ORDERS

3 15. All prior injunctions and other orders of this Court, except to the extent
4 expressly modified herein, are reaffirmed and remain in full force and effect. All powers and
5 authority granted to the Commissioner as Liquidator under this Order are in addition to and not
6 in limitation of the powers of the Liquidator under the California Insurance Code and any other
7 statutory or applicable case law.

8 16. Respondent, its officers, directors, agents and employees and all other persons
9 are enjoined from transacting the business of Respondent and from disposing of any of its
10 California assets or property or any other assets or property of Respondent wheresoever situated.

11 17. All persons are enjoined from interfering with the possession, title and rights
12 of the Commissioner, as Liquidator, in and to the assets of Respondent, and from interfering with
13 the conduct of the liquidation and the winding up of the business of Respondent.

14 18. All persons are enjoined from waste of assets of Respondent.

15 19. All persons are enjoined from instituting or prosecuting or maintaining any
16 action or proceeding at law or suit in equity, including but not limited to matters in arbitration,
17 against Respondent or the Commissioner as Liquidator of Respondent, and from attaching or
18 executing upon, or taking, any legal action against the property held by Respondent without the
19 consent of this Court obtained after reasonable notice to said Liquidator.

20 20. All persons are enjoined from obtaining preferences, judgments, attachments
21 or other licenses, or from making any levy against Respondent or its assets without the consent
22 of this Court obtained after reasonable notice to the Commissioner as Liquidator.

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

26 22. Respondent and its respective officers, directors, agents, servants, employees,
27 successors, assigns, affiliates, and other persons or entities under their control and all persons or
28 entities in active concert or participation with them, and each of them, are ordered to turn over to



1 the Commissioner as Liquidator all records, documentation, charts and/or descriptive material of
2 all funds, assets, property owned beneficially or otherwise, and all other assets of Respondent
3 wherever situated, and all books and records of accounts, title documents, leases, rental and
4 utilization agreements and other documents in their possession or under their control, which
5 relate, directly or indirectly, to assets or property of Respondent belonging to or now held by
6 Respondent or any of them or to the business or operations of Respondent.

7 LITIGATION AND LEGAL PROCESS

8 23. The Commissioner as Liquidator is authorized to initiate such equitable or
9 legal actions or proceedings in this or other states as may appear to him necessary to carry out his
10 functions as Liquidator.

11 24. Except with leave of court issued after a hearing in which the Commissioner
12 as Liquidator has received reasonable notice, all persons are enjoined from executing or issuing
13 or causing the execution or issuance of any court attachment, subpoena, replevin, execution or
14 other process for the purpose of impounding or taking possession of or interfering with or
15 creating or enforcing a lien upon any property owned or in the possession of Respondent or its
16 affiliates, or the Liquidator appointed herein, wheresoever situated.

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

26 26. Any and all provisions of any agreement entered into by and between any
27 third party and Respondent, including, by way of illustration, but not limited to, the following
28 types of agreements (as well as any amendments, assignments, or modifications thereto):



1 financial guarantee bonds, promissory notes, loan agreements, security agreements, deeds of
2 trust, mortgages, indemnification agreements, subrogation agreements, subordination
3 agreements, pledge agreements, assignments of rents or other collateral, financial statements,
4 letters of credit, leases, insurance policies, guaranties, escrow agreements, management
5 agreements, real estate brokerage and rental agreements, servicing agreements, consulting
6 agreements, easement agreements, license agreements, franchise agreements, bonus/incentive
7 plans or agreements or employment contracts that provide in any manner that selection,
8 appointment or retention of a liquidator or trustee by any court, or entry of any order such as
9 hereby made, shall be deemed to be, or otherwise operate as, a breach, violation, event of default,
10 termination, event of dissolution, event of acceleration, insolvency, bankruptcy, or liquidation,
11 shall be stayed, and the assertion of any and all rights relating thereto shall also be stayed and
12 barred, except as otherwise ordered by this Court and this Court shall retain jurisdiction over any
13 cause of action that has arisen or may otherwise arise under any such provision.

14 **CLAIMS BAR DATE**

15 27. Any and all claims against Respondent (except those policyholder claims
16 already pending against Respondent, which are deemed filed), including those which in any way
17 affect or seek to affect any of the assets of Respondent, wherever or however such assets may be
18 owned or held, must be filed by no later than December 2, 2001 (the "Claims Bar Date"),
19 together with proper proof thereof, in accordance with the provisions of Insurance Code sections
20 1010 *et seq.*, including but not limited to section 1023. Any claims not filed by the Claims Bar
21 Date shall be conclusively deemed forever waived.

22 **OTHER PROVISIONS**

23 28. Nothing in this Order is intended to affect, modify or otherwise alter the
24 jurisdiction of this Court.

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29. Headings contained herein shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning or intent of the provisions of any part or section of this Order.

Dated: 7/8/2001

William Cahill
The Honorable ~~David Garcia~~ William
Judge of the Superior Court Cahill

