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COUNTY CLERK

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

INSURANCE COMMISSIONER OF
THE STATE OF CALIFORNIA,

Applicant,

v.

FIRST CAPITAL LIFE INSURANCE
COMPANY, a California
Corporation, and DOES 1
THROUGH 1,000,
Respondents.

Case No.

BS007549
ORDER APPOINTING CONSERVATOR,
ESTABLISHMENT OF PROCEDURES,
ISSUANCE OF INJUNCTIONS AND
RELATED ORDERS

The verified Application for Order of Conservation of
Respondent, First Capital Life Insurance Company ("First Capital"
or "Respondent") came on for hearing on May 14, 1991 in

1 Department 67, the Hon. Kurt J. Lewin, Judge

2 Presiding. Applicant appeared by his above-captioned counsel and
3 Respondent appeared by its counsel and consented to the
4 application, and the Court, having considered the said
5 Application, the circumstances of the Respondent, the applicable
6 law and the arguments of counsel has found that the condition of
7 Respondent is such that the further transaction of its business
8 outside of a conservation proceeding would be hazardous to its
9 policyholders, creditors and to the public and, therefore

10 IT IS HEREBY ORDERED THAT:

11 1. The Insurance Commissioner of the State of California
12 is, in his official capacity and pursuant to the provisions of
13 the California Insurance Code, hereby appointed Conservator of
14 Respondent, First Capital Life Insurance Company, and he and his
15 successors in office are hereby vested with all title, both legal
16 and equitable to all of Respondent's assets, books, records,
17 property, real and personal, including all property or ownership
18 rights, choate or inchoate, whether legal or equitable of any
19 kind or nature, wherever situated and however held, including but
20 not limited to all letters of credit relating to the Respondent
21 or its business, all stocks, bonds, certificates of deposit,
22 cash, cash equivalents, contract rights, reinsurance contracts
23 and reinsurance recoverables, in force insurance contracts and
24 business, deeds, mortgages, leases, book entry deposits, bank
25 deposits, certificates of deposit, evidences of indebtedness,
26 bank accounts, securities of any kind or nature,
27 both tangible and intangible all of which is hereinafter
28 collectively called the "Property." In addition to vesting title

1 to all such Property in the Commissioner or his successors
2 (hereinafter jointly called "Conservator"), the said Property is
3 hereby placed in the *custodia legis* of this Court and this Court
4 hereby assumes and exercises sole and exclusive jurisdiction over
5 all the Property and any claims or rights respecting such
6 Property to the exclusion of any other court or tribunal, such
7 exercise of sole and exclusive jurisdiction being hereby found to
8 be essential to the safety of the public and of the policyholders
9 and other creditors of Respondent.

10 2. The Conservator is hereby authorized to take possession
11 of or order the disposition of any of the said Property, and to
12 conduct the business of Respondent, or so much thereof as he may
13 deem appropriate, and to act in all ways and exercise all powers
14 necessary or convenient for the purpose of carrying out this
15 Order. Further, the Conservator is authorized to appoint such
16 agents, deputies, supervisors, attorneys, accountants, actuaries
17 or other assistants or consultants as he may deem appropriate to
18 assist him in carrying out his duties hereunder;

19 3. It being found that it is essential to the safety of
20 the public and is in the best interest of the shareholders,
21 policyholders and other creditors of Respondent and to the
22 orderly administration of these proceedings, Respondent and its
23 officers, directors, shareholders, attorneys and attorneys-at-
24 law, agents, affiliates, subsidiaries, reinsurers, brokers,
25 third-party administrators, servants and employees and all other
26 persons, agencies, associations and entities are hereby enjoined
27 and restrained from:

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- 1 a. transacting any of the business of Respondent or the
2 disposition of any of the Property except in accordance with
3 the provisions of this order and the written instructions of
4 the Conservator until further order of this Court;
- 5 b. interfering with the acquisition of possession by or
6 the exercise of dominion and control over the
7 Property by the Conservator, with the jurisdiction of this
8 Court, or with these proceedings;
- 9 c. the sale, hypothecation, mortgaging, waste, conveyance,
10 or dissipation, of the Property or the assertion of dominion
11 or control over the Property other than as permitted by
12 prior orders of this Court;
- 13 d. the seeking or obtaining of any preferences of any kind
14 or nature, the obtaining of any judgments, foreclosures,
15 attachments, levies or liens of any kind or nature, the
16 exercise of any powers of sale or any rights of set-off,
17 rescission or the like against respondent or the Property
18 except pursuant to the prior orders of this Court, this
19 Court having exercised its exclusive jurisdiction with
20 respect to the Property and any claims and rights asserted
21 with respect to it;
- 22 e. the filing, commencement or prosecution of any new
23 suits, arbitration proceedings, mediations, alternate
24 dispute resolutions or demands or claims or the continued
25 prosecution of any pending suits, arbitration proceedings,
26 mediations, alternate dispute resolutions or claims with
27 respect to Respondent or the Property other than in this
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1 proceeding before this Court unless the prior approval of
2 this Court has been granted upon good cause shown; and
3 f. from interfering with the possession, title and rights
4 of the Commissioner, as Conservator, in and to the assets of
5 Respondent, and from interfering with the Conservator in the
6 conducting of the business of Respondent, and
7 g. the institution of suits to collect any of the Property
8 or institution of suits which purport to assert derivative
9 rights on behalf of respondent.

10 4. Notwithstanding the foregoing, the Conservator is
11 authorized to delegate to the following persons the written
12 authority to continue, pending further orders of this court,
13 performing the day-to-day management functions of the Respondent,
14 subject to the supervision of the Conservator: Fred A. Buck,
15 President; Andrew G. Loeb, General Counsel; Edward R. Mekeel,
16 Chief Financial Officer and Julia S. Kelly, Senior Vice
17 President, Operations; (jointly the "Conservation Managers").
18 Subject to the limitation that such Conservation Managers may not
19 expend or transfer funds of the Respondent in excess of \$75,000
20 without the co-signature of the Conservator or his designee, the
21 Conservation Managers shall have the power to conduct the normal
22 day-to-day operations of Respondent for and on behalf of the
23 Conservator. The Conservator shall appoint such other and further
24 Conservation Managers as he may deem necessary or desirable for
25 the efficient conduct of the business of Respondent.

26 5. Jerry J. Reiley, the Chief Examiner of the
27 Department Of Insurance, is hereby appointed as Supervisor of
28 First Capital with the power and authority to direct the business

1 and affairs of Respondent on behalf of the Conservator (the
2 "Supervisor"), and to exercise such powers as may be expressly
3 delegated to him by the Conservator. The Supervisor, or such
4 replacement Supervisors or deputy Supervisors as the Conservator
5 may hereafter appoint in writing, shall have the power and
6 authority to co-sign all transactions with the Conservation
7 Managers and to otherwise direct the Conservation Managers or the
8 business affairs of the Respondent.

9 6. All bank accounts, brokerage accounts, deposits, or
10 similar financial arrangements of the Respondent shall, subject
11 to the limitations set forth hereinabove with respect to the
12 \$75,000.00 maximum, continue to function normally when authorized
13 to do so by one or more of the Conservation Managers, the
14 Supervisor or other person or entity designated in writing by the
15 Conservator. In all other respects the injunctions and moratoria
16 set out herein shall remain in full force and effect.

17 7. Respondent is immediately to suspend the making of
18 any policy loans, the processing of any policy cancellations,
19 surrenders or exchanges, the return of any premiums or any other
20 voluntary payments. Provided, however, that Respondent shall
21 nevertheless, pending further orders of this court, continue to
22 make payment upon involuntary claims such as death benefits,
23 periodic annuitization payments or other similar involuntary
24 claim payments. Further, whole or partial surrenders of variable
25 separate account holdings of variable annuity contracts shall
26 continue to be paid. Respondent shall also immediately cease and
27 desist from transacting, soliciting or writing any new insurance
28 business of any kind. Any resumption of any such business may be

made only with the prior written consent of the Insurance Commission. Respondent is further ordered not to remove any assets from the State of California or to permit any transfers of funds or other assets to any shareholder or affiliate, without the prior written consent of the Insurance Commissioner.

9. All officers, directors, attorneys, attorneys-at-law, agents, solicitors, brokers, third-party administrators, servants and employees of Respondent are hereby ordered immediately to deliver, at his request, or the request of the Supervisor, to the Conservator or the Supervisor all assets, books, records, files, legal files, documents, equipment and other property of Respondent which is in their possession or subject to their control and to provide to the Conservator, upon demand, a full accounting as to all of such items and other property which is or has been in their possession or subject to their control;

10. All banks, savings and loan associations, thrift associations, depositories, custodians, sub-custodians, brokerage organizations, and any other entity holding any of the funds or securities or any other of the Property are, in addition to being subject to the foregoing orders, expressly ordered not to permit any withdrawal, offset, transfer or any other disposition of the Property by themselves or by any person other than upon the written directions of the Conservator, the Supervisor or their designees, except and subject to the said \$75,000 limitation by the Conservation Managers. Security Pacific National Bank, which is one of the principal banks of Respondent, is expressly so instructed and enjoined, but the failure to expressly name any other bank or institution shall not limit the general application

of the injunctions contained herein which are intended to have universal and general application.

11. Said Conservator is hereby authorized to initiate such equitable or legal actions or proceedings in this or other states as he may deem appropriate, and may obtain the assistance of such peace officers, attorneys, consultants and other assistance as the Conservator may deem appropriate to assist him, all as may appear to him necessary to carry out his functions as Conservator. The Conservator and all of his deputies, special deputies, attorneys, accountants, peace officers and other consultants and any officer, director or employee of such consultants are deemed to be public officers acting in their official capacities on behalf of the state and shall have no personal liability for or arising out of their acts or omissions performed in good faith in connection with their services performed in connection with these or related proceedings or pursuant to this or related orders.

12. No judgment, order, attachment, garnishment sale, assignment, transfer, hypothecation, lien, security interest or other legal process of any kind with respect to or affecting the Respondent or the Property shall be effective or enforceable or form the basis for a claim against Respondent or the Property unless entered by this Court or unless this Court has issued its specific order, upon good cause shown and after due notice and hearing, permitting same.

13. All costs, expenses, fees or any other charges of the Conservation, including but not limited to fees and expenses of accountants, peace officers, actuaries, attorneys,

special deputies, and other assistants employed by the Conservator, the giving of the Notice required herein, and other expenses incurred in connection herewith shall be paid from the assets of Respondent. Provided, further, that the Conservator may, in his sole discretion, require third parties, if any, who propose rehabilitation plans with respect to Respondent to reimburse the estate of Respondent for the expenses, consulting or attorney's fees and other costs of evaluating and/or implementing any such plan. The Conservator is hereby authorized to employ and set the compensation of, such accountants, actuaries, attorneys, special deputies and other assistants as he may deem necessary to assist him in carrying out his duties and authority as Conservator.

14. This is clearly a complex matter and involves the vital public interest of the State of California. It is imperative that streamlined procedures be implemented in order to permit the Conservator to proceed with the kind of dispatch that the situation and the modern fast-paced business environment require. It is therefore appropriate that the following special procedures be, and they are hereby, implemented with respect to these proceedings:

a. The Conservator is hereby authorized to file herein, on an Ex Parte basis and without a specific declaration supporting the need for an Ex Parte procedure in each separate instance, such Motions For Instructions as he may deem necessary.

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1 b. This Court shall, upon the filing of any such
2 Motion For Instructions (the "Motion") forthwith
3 consider same on an Ex Parte basis.

4 c. Upon such consideration, the Court shall issue an
5 Order of Instructions (the "Order") which shall
6 instruct and authorize the Conservator to act or
7 refrain from acting as the Court deems appropriate.

8 d. Immediately upon the entry of the Order, the Court
9 shall set a hearing (the "Confirmation Hearing") and
10 provide for twenty (20) days' notice thereof to the
11 shareholders of FIRST CAPITAL and to such other persons
12 or other legal entities that shall, as of the entry of
13 the Order, have entered appearances in these
14 proceedings. This Court hereby finds and determines
15 that such notice and hearing are fair, reasonable and
16 sufficient in regard to the said Confirmation Hearing
17 and are adequate to protect all rights of interested
18 persons or other legal entities.

19 e. At the said Confirmation Hearing the Court shall
20 consider such evidence, arguments, comments,
21 suggestions or other factors as may be appropriate and,
22 unless the Court shall order otherwise, the Order shall
23 become a judgment for all purposes within the meaning
24 of Rule 40, California Rules of Court, ten (10) days
25 after the Confirmation Hearing, and the provisions of
26 Rule 2 California Rules of Court shall apply thereto.
27 Any order issued with respect to or as a result of
28 matters considered at the Confirmation Hearing, shall,

1 likewise, become a judgment for all purposes ten (10)
2 days after entry, and as said Rules of Court shall
3 apply thereto.

4 f. This Order and the procedures established hereby
5 are reasonable and equitable and are necessary to
6 provide for the efficient administration of the
7 conservatorship. The same are in addition to the
8 rights and powers of the Conservator and his Deputies
9 and Assistants and are discretionary with him. Thus,
10 the Conservator and his Deputies and Assistants shall
11 continue to have all authority granted to them by
12 relevant statutory and case law. Notwithstanding this
13 Order, the Conservator shall never be required to file
14 a Motion for Instructions herein nor is he required to
15 obtain the order of this Court in order to take any
16 action or exercise any power already granted to him
17 pursuant to such laws including, but not limited to
18 Sections 1011, 1013, 1016, 1036, 1037, 1041, 1043,
19 1044, 1064.2 and any other Code Section.

20 15. Due to the complex nature of these proceedings and the
21 limited resources of the Conservator, the Conservator shall,
22 notwithstanding any other procedural rule, be entitled to at
23 least ten (10) days' prior notice of any hearings. This rule
24 shall also apply to ex parte matters, provided that in the event
25 of a dire emergency an ex parte matter may be noticed upon forty-
26 eight (48) hour prior notice to the Conservator. In the event
27 any person or entity shall seek ex parte relief on the basis of a
28 dire emergency and it shall appear to the Court that a dire

1 emergency did not exist, such party shall be subject to
2 sanctions.

3 16. A hearing (the "Hearing") is hereby set for
4 7-15-91 at 9 a.m. before this Court at which time
5 all suggestions, arguments, objections or other matters relating
6 to this Order shall be considered. Any objections hereto or to
7 any provision hereof which are not presented at such hearing
8 shall be denied and deemed forever waived. Given the complex
9 nature of these proceedings and the large number of persons and
10 entities that are interested herein, it is ordered that any
11 person or entity wishing to appear at the Hearing or to present
12 suggestions, arguments, objections or other matters at the
13 Hearing shall provide written notice of such intent and a summary
14 of the matter to be presented as well as copies of any documents
15 to be presented, to the Conservator at least ten (10) days prior
16 to the Hearing. Such notice to the Conservator shall provide a
17 brief statement of the suggestions, arguments, objections or
18 other matters to be presented. Any person or entity failing to
19 provide such notice and description to the Conservator may be
20 barred from appearing at the Hearing and from presenting same at
21 the Hearing.

22 17. Notice of the Hearing shall be given by certified mail,
23 return receipt requested, to the Shareholders of First Capital,
24 and a Notice in the form of Exhibit "A" hereto shall be published
25 in the national edition of *The Wall Street Journal* and *U.S.A.*
26 *Today* for a period of at least two days and in a newspaper of
27 general circulation, published in Los Angeles County, once a week
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1 for four successive weeks. The Court hereby finds that such
2 notice, including the form and contents of Exhibit "A" hereto are
3 reasonably calculated to and do provide fair, reasonable and
4 adequate notice of these proceedings, this Order and the Hearing.

5 MAY 14 1991
6 DATED: _____

7 KURT J. LEWIN
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9 Judge of the Superior Court
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