

IN THE DISTRICT COURT OF OKLAHOMA COUNTY  
STATE OF OKLAHOMA

APR - 5 2012

PATRICIA PRESLEY, COURT CLERK  
by \_\_\_\_\_ DEPUTY

STATE OF OKLAHOMA, ex rel. )  
JOHN DOAK, Insurance Commissioner, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
HOSPITAL CASUALTY COMPANY, )  
 )  
Defendant. )

Case No. CJ-2004-6260  
*The Honorable Bryan C. Dixon*

**ASSISTANT RECEIVER'S THIRTY-FOURTH REPORT ON  
CLAIMS READY TO BE ADJUDICATED AND RECOMMENDATION  
TO THE DISTRICT COURT FOR THE DENIAL OF SUCH CLAIMS**

John Doak, Insurance Commissioner, as Receiver of Hospital Casualty Company, through the Assistant Receiver,<sup>1</sup> pursuant to 36 O.S. § 1918, respectfully submits to this Court the Assistant Receiver's Thirty-Fourth Report on Claims Ready to be Adjudicated and Recommendation to the District Court of the Denial of Such Claims, and in support thereof, would show the Court as follows:

**BACKGROUND**

1. On August 6, 2004, the Insurance Commissioner of the State of Oklahoma was appointed as Receiver of Hospital Casualty Company (hereinafter "HCC"). John Doak is the Insurance Commissioner and submits this Report acting in his capacity as Receiver of HCC.

2. On October 1, 2004, an Agreed Order of Liquidation was entered placing HCC in liquidation. The Receiver is charged with liquidating the receivership estate, marshaling the assets, and collecting all monies due HCC for the benefit of HCC and its creditors.

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<sup>1</sup> As of April 1, 2011, Donna Wilson became the Assistant Receiver for HCC. Prior to Ms. Wilson's appointment, Richard S. Darling served as the Assistant Receiver for HCC.

3. On November 2, 2004, the Receiver filed a Combined Application for Approval of (A) Notice of Liquidation of Insurer & Deadline to File Proof of Claim; (B) Supplemental Notice to Certain Claims-Made Policy Holders, and (C) Form of Proof of Claim and Instructions; Application for Order Directing Notice by Publication; and Application for Approval of Receiver's Claims Reporting and Evaluation Plan ("Combined Application").

4. On November 12, 2004, this Court entered its Order Approving Receiver's Combined Application ("November 12, 2004 Order"). By the November 12, 2004 Order, the Court approved the Receiver's proposed: (a) Notice of Liquidation of Insurer & Deadline to File Proof of Claim; (b) Supplemental Notice for Certain Claims Made Policy Holders; and (c) Form of Proof of Claim and Instructions.

5. On May 31, 2005, the Assistant Receiver filed the Receiver's Report on Timely Filed Claims. On October 28, 2005, the Assistant Receiver filed a Supplemental Report on Additional Timely Filed Claims. The Receiver's reports on timely filed claims noted the mailing of over 15,000 proofs of claim forms and the receipt of approximately 4,200 timely filed claims.

6. On March 1, 2006, the Assistant Receiver filed the Receiver's Report on Claims Ready to be Adjudicated and the Assistant Receiver's Recommendations to the District Court on the Allowance or Disallowance of Such Claims. Since that time, an additional thirty-two supplemental reports have been filed.

7. The Court has ruled upon the recommendations of the Receiver in the prior thirty-three reports on claims ready to be adjudicated, and thereby adjudicated over 4000 proofs of claim.

8. The Assistant Receiver hereby advises the Court that two additional Class 3 Claims are ready for adjudication at this time. Pursuant to 36 O.S. § 1927.1, Class 3 Claims

include:

All claims under the policies including claims of the federal or any state or local government for losses incurred ("loss claims") including third party claims, claims for unearned premiums, all claims of a guaranty association for payment of covered claims or covered obligations of the insurer and all claims of a guaranty association for reasonable expenses other than those included in Class 2. All claims under life and health insurance and annuity policies, whether for death proceeds, health benefits, annuity proceeds, or investment values shall be treated as loss claims. That portion of any loss, indemnification for which is provided by other benefits or advantages recovered by the claimant, shall not be included in this class, other than benefits or advantages recovered or recoverable in discharge of familial obligation of support or by way of succession at death or as proceeds of life insurance, or as gratuities.

9. Apart from the claims made the subject of this Thirty-Fourth Report, there remains only one proof of claim to adjudicate, the claim of the Oklahoma Property and Casualty Insurance Guaranty Association ("OPCIGA"). The Assistant Receiver intends to present the OPCIGA's proof of claim for adjudication through a later submission.

10. The Assistant Receiver has not completed marshaling all of HCC's assets. Therefore, this Report does not address the actual distribution of assets that may ultimately be made to creditors and beneficiaries of HCC. The amount distributed to a creditor on a claim will likely be less than any amount the Receiver may recommend be allowed in relation to a claim due to the anticipated insufficiency of funds in the HCC receivership estate.

#### **EXPLANATION OF RECEIVER'S RECOMMENDATION**

11. Attached hereto as Exhibit "1" is a report detailing the Assistant Receiver's recommendation on the two (2) Class 3 Claims ready for adjudication. The Assistant Receiver has analyzed these claims and recommends that each of the two claims should be (a) classified as a Class 3 claim; and (b) denied in its entirety. The "Amount Claimed" column on the attached Exhibit "1" represents the amount that the particular claimant is sought through the Proof of Claim while the "Amount Allowed" is the amount the Assistant Receiver recommends be

allowed.<sup>2</sup> The Assistant Receiver has given notice to the claimant of the recommendation through a written Notice of Determination and provided the claimant an opportunity to object to the Receiver's recommendation. Neither of the Claimants has presented any objection to the Assistant Receiver's recommendations.

12. The Proof of Claim form filed by each claimant contains the following language in conspicuous bold type: **"If you have a change of address, you are required to inform the receiver of the new address in order to receive any payment that might be due."** Despite having no obligation to locate a new address for a claimant, upon receipt of a returned Notice of Determination, the Assistant Receiver seeks to locate the claimant, by among other things, searching the internet and local phone books or calling claimant's attorney, if represented. The address to which the Notices of Determination have been mailed represent the most current address located by the Receiver for any returned mail. To the extent any Notice of this proceeding is returned as undeliverable, the Receiver asks the Court to find the due process rights of the claimant have not been impaired and order the denial of their claim without further attempts to give actual notice.

13. Each of the claimants reflected on the attached Exhibit has been allowed an opportunity to object to the Receiver's proposed adjudication of the claim. Neither of these claimants has presented an objection to the proposed adjudication. Nevertheless, considering the due process required by 36 O.S. § 1918, the Assistant Receiver requests the Court to set a hearing on the claims and establish a date certain for filing an objection to the Assistant Receiver's recommendations.

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<sup>2</sup> The "Amount Claimed" column for Proof of Claim # 3984 in the attached Exhibit "1" is intentionally blank because the claimant stated in the Proof of Claim that the amount claimed was "Undetermined."

14. The claims identified on the attached report have been presented to the OPCIGA and have settled for an amount within the applicable statutory limitations. Accordingly, the Assistant Receiver recommends that the claims against the HCC receivership estate be denied.

15. Neither the Assistant Receiver's recommended denial of any timely-filed proof of claim included in the Assistant Receiver's Thirty-Fourth Report nor the Court's confirmation of that recommendation alters the statutory obligation, if any, of the OPCIGA or other applicable state guaranty fund, to provide indemnity and defense of a "covered claim" as defined by the Oklahoma Property & Casualty Insurance Guaranty Association Act, 36 O.S. § 2004(7), or other applicable statute.

16. The Assistant Receiver's characterization of a claim or payment does not constitute an admission of liability by HCC for purposes of any litigation.

17. Attached as Exhibit "2" is a form of Notice the Receiver proposes be sent to claimants whose claims are made the subject of this Thirty-Fourth Report.

**WHEREFORE**, the Assistant Receiver requests that this Court:

- a. Order that the Receiver provide notice of opportunity to object and be heard to each of the claimants making a claim reflected on the attached Exhibit "1" and find that the proposed form of notice attached hereto as Exhibit "2" is proper in all respects;
- b. Establish a date for filing an objection to the recommendation of the Assistant Receiver and a date for the Assistant Receiver to file a response to any objections;
- c. Establish a date for hearing the Assistant Receiver's recommendations to the Court and any objections thereto;
- d. Upon hearing any objections thereto, enter an order approving the Assistant Receiver's Report and the recommendations contained therein; and
- e. Grant the Receiver such other relief as the Court deems appropriate.

Respectfully submitted,



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John M. O'Connor, OBA No. 6741  
William W. O'Connor, OBA No. 13200  
NEWTON, O'CONNOR, TURNER & KETCHUM, P.C.  
15 West Sixth Street, Suite 2700  
Tulsa, Oklahoma 74119  
Telephone: (918) 587-0101  
Facsimile: (918) 587-0102  
[joconnor@newtonoconnor.com](mailto:joconnor@newtonoconnor.com)

-AND-

Mark A. Willingham, OBA # 22769  
3613 NW 56<sup>th</sup> Street, Ste. 330  
Oklahoma City, OK 73112  
(405) 947-0022 – telephone  
(405) 947-0046 – facsimile  
[mark.willingham@oid.ok.gov](mailto:mark.willingham@oid.ok.gov)

**ATTORNEYS FOR PLAINTIFF, STATE  
OF OKLAHOMA, ex rel., JOHN DOAK,  
Insurance Commissioner for the State of  
Oklahoma, as Receiver for Hospital  
Casualty Company, in Liquidation**

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the foregoing was served via United States mail, postage prepaid and properly addressed, on the 5th day of April, 2012 upon the following:

Owen Laughlin  
Oklahoma Insurance Department  
3625 NW 56<sup>th</sup> Street, Ste. 100  
Oklahoma City, OK 73112

Larry Fitch  
Oklahoma Property & Casualty Insurance Guaranty Association  
2601 NW Expressway, Suite 330E  
Oklahoma City, OK 73112

Robert N. Naifeh, Jr.  
Derryberry & Naifeh  
4800 N. Lincoln Blvd  
Oklahoma City, OK 73105

Craig W. Jones, FACHE  
Oklahoma Hospital Association  
4000 Lincoln Boulevard  
Oklahoma City, OK 73105

Oklahoma Receivership Office, Inc.  
Donna Wilson / Debra Crowe  
3613 NW 56<sup>th</sup>, Suite 330  
Oklahoma City, OK 73112



John M. O'Connor

Claim Class: 3

Timely Filed?	Yes	POC #	Amount Claimed	Amount Allowed
	3984			\$0.00
Timely Filed?	Yes	3999	\$5,000,000.00	\$0.00
Class 3 Totals:			\$5,000,000.00	\$0.00
Total Claims:			\$5,000,000.00	\$0.00

