

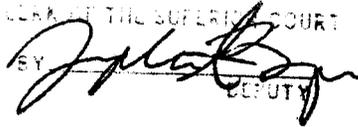
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF MERCED

FILED
MERCED COUNTY
18 DEC -3 PM 1:20

CLERK OF THE SUPERIOR COURT
BY  DEPUTY

18CV - 04739
Judge: McCabe, Brian

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

Applicant,

v.

**MERCED PROPERTY & CASUALTY
COMPANY, a California corporation**

Respondent.

Case No.

**[PROPOSED] ORDER APPOINTING
COMMISSIONER AS LIQUIDATOR
AND RESTRAINING ORDERS**

[Ins. Code, § 1016]

Date: December 3, 2018
Time: 1:15 p.m.
Dept: 8
Judge:

The Verified Ex Parte Application of the Insurance Commissioner of the State of California ("Commissioner") for an Order Appointing Commissioner as Liquidator of Merced Property & Casualty Company ("Merced") came on regularly for hearing in Department 8 of the Merced County Superior Court.

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

- 1 A. Merced is insolvent.
- 2 B. It would be futile for the Commissioner to proceed as Conservator of Merced.
- 3 C. There exist sufficient factual and legal grounds for the Commissioner to liquidate and
- 4 wind up the business of Merced in a manner consistent with the provisions of this Order.
- 5 D. The California Insurance Commissioner is prepared to commence liquidation of
- 6 Merced with (i) David E. Wilson serving as the Special Deputy Insurance Commissioner and
- 7 Chief Executive Officer of the Conservation and Liquidation Office ("CLO") of the California
- 8 Department of Insurance, and specifically as the Liquidator of Merced and (ii) Scott Pearce of the
- 9 CLO, serving as the Liquidation Manager for Merced.

10 **WHEREFORE, GOOD CAUSE APPEARING, THIS COURT MAKES THE**

11 **FOLLOWING ORDERS:**

12 1. The Commissioner is appointed as Liquidator of Merced, as set forth in Insurance Code

13 section 1016, and directed to liquidate and wind up the affairs of Merced, conduct the business of

14 Merced, or so much as thereof may seem appropriate, pay or defer payment of all proper claims

15 and obligations against Merced accruing prior to or subsequent to his appointment as Liquidator

16 and act in all ways and exercise all powers necessary for the purpose of carrying out such order;

17 2. The Commissioner as Liquidator is authorized to take possession of all the assets of

18 Merced including books, records and property (both real and personal), accounts, safety deposit

19 boxes, rights of action, and all such assets that may be in the name of Merced wherever they are

20 situated;

21 3. Title to all property and assets of Merced, including deposits, securities, contracts,

22 rights of action, books, records, and other assets of every type and nature, including both those

23 presently in Merced's possession and those which may be discovered hereafter, wherever

24 situated, is vested in the Commissioner or his successor in office, in his official capacity as such

25 Liquidator, and all persons are enjoined from interfering with the Commissioner's possession and

26 title thereto;

27 4. The Commissioner as Liquidator is authorized to pay out of the funds and assets of

28 Merced all reasonable costs of taking possession of and liquidating Merced (including but not

1 limited to the Commissioner's pre-liquidation costs in examining Merced's financial condition,
2 and preparing to take possession and liquidate Merced), and for all reasonable costs incurred in
3 bringing and maintaining this legal proceeding and such other actions as are necessary to carry
4 out the Commissioner's functions as Liquidator and, if there are insufficient funds to pay his
5 costs, to pay them out of the Insurance Fund pursuant to Insurance Code section 1035;

6 5. The Commissioner as Liquidator is authorized to initiate such equitable or legal actions
7 or proceedings in this or other states as may appear to him necessary to carry out his functions as
8 Liquidator including foreclosing on any security interests in favor of Merced;

9 6. The Commissioner as Liquidator is authorized to appoint and employ special deputies,
10 estate managers, other professionals, clerks and assistants and to give each of them such power
11 and authority as he may deem necessary and to compensate those persons from the assets of
12 Merced as the Commissioner may deem appropriate. David E. Wilson, Special Deputy Insurance
13 Commissioner, is hereby appointed as Deputy Liquidator empowered to carry out any and all
14 duties and exercise the authority of the Liquidator as granted herein and under the Insurance
15 Code. Scott Pearce is hereby appointed as Liquidation Manager empowered to carry out any and
16 all duties and exercise the authority of the Liquidator and Deputy Liquidator and as may be
17 delegated by the Liquidator and Deputy Liquidator;

18 7. The Commissioner as Liquidator is authorized to divert, take possession of and secure
19 all mail of Merced so that the Commissioner may screen such mail and effect a change in the
20 rights to use any and all post office boxes and other mail collection facilities of Merced;

21 8. The Commissioner as Liquidator is authorized to pay all reasonable costs of operating
22 Merced (including but not limited to all direct and indirect costs, administrative expenses, general
23 overhead, allocated expenses and any other expenses associated with Merced's operations during
24 the course of liquidation) out of funds and assets of Merced and if there are insufficient funds to
25 pay his costs, to pay them out of the Insurance Fund pursuant to Insurance Code section 1035;

26 9. The Commissioner as Liquidator is authorized to invest Merced's assets in such a
27 manner as to him may seem suitable for the best interest of Merced's creditors. No investment or
28 reinvestment shall be made which exceeds the sum of \$100,000 without first obtaining

1 permission of the Court, except the Commissioner may invest or reinvest in excess of \$100,000,
2 but no more than the sum of \$2,000,000 without prior approval if such investments are made
3 pursuant to the Insurance Commissioner of the State of California Conservation & Liquidation
4 Office Investment Guidelines. A true and genuine copy of the guidelines is attached hereto as
5 Exhibit A.

6 10. The Commissioner as Liquidator is authorized, pursuant to Insurance Code section
7 1037, subsection (g), and notwithstanding the provisions of paragraph 9 above, to invest and
8 reinvest assets through an investment pool consisting exclusively of assets from conserved or
9 liquidated estates. To the extent that the Commissioner as Liquidator invests and reinvests
10 through such an investment pool, such investments and re-investments may exceed \$100,000;

11 11. The Commissioner as Liquidator is authorized, pursuant to Insurance Code section
12 1037, subdivision (d), to dispose of any excess property of Merced by any commercially
13 reasonable method including, but not limited to, sales at public auctions or sales in bulk to the
14 high bidder (provided at least three (3) independent dealers in the kind of property sold are given
15 notice of the opportunity to bid);

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

28

1 13. Merced and all former and present officers, directors, agents, and employees of Merced
2 are directed to deliver to the Commissioner as Liquidator all assets, books, records, equipment,
3 and other property of Merced wherever situated;

4 14. All funds and assets, including certificates of deposit, bank deposits and mutual fund
5 shares of Merced, in various financial depository institutions, including banks, savings and loan
6 associations, industrial loan companies, mutual funds or stock brokerages, wherever situated, are
7 directed to be vested in the Commissioner as Liquidator and subject to withdrawal upon his order
8 only;

9 15. All persons who maintain records for Merced, pursuant to written contract or any other
10 agreement, are ordered to maintain such records and to deliver them to the Commissioner as
11 Liquidator upon his request;

12 16. All agents of Merced and all brokers who have done business with Merced are directed
13 to make remittances directly to the Commissioner as Liquidator of all funds collected or held by
14 them; this obligation to remit collected funds is continuing in nature;

15 17. All persons having possession of any lists of policyholders or escrow holders of Merced
16 are directed to deliver all such lists to the Commissioner as Liquidator; and all persons are
17 enjoined from using any such lists or any information contained therein without the consent of the
18 Commissioner as Liquidator;

19 18. Merced and its respective officers, directors, agents, servants, employees, successors,
20 assigns, affiliates, and other persons or entities under their control and all persons or entities in
21 active concert or participation with them, and each of them, are directed to turn over to the
22 Commissioner as Liquidator all records, documentation, charts and/or descriptive material of all
23 funds, assets, property (owned beneficially or otherwise), and all other assets of Merced wherever
24 situated, and all books and records of accounts, title documents and other documents in their
25 possession or under their control, which relate, directly or indirectly, to assets or property owned
26 by or held by Merced or to the business or operations of Merced;

27 19. All insurance policies issued by Merced shall be terminated and canceled effective
28 thirty (30) days following the issuance of this order, and the Commissioner as Liquidator is

1 directed to notify promptly all policyholders of such policy termination and cancellation by First
2 Class Mail at the last known address of such policyholders; and, in addition, the Commissioner as
3 Liquidator is authorized, in his sole discretion, to terminate and cancel any policies issued by
4 Merced that are not covered by the preceding sentence or that were issued by a fronting insurer
5 and reinsured in whole or in part by Merced;

6 20. All powers and authority granted to the Commissioner as Liquidator under this order
7 are in addition to and not in limitation of the powers of the Commissioner as Liquidator under the
8 Insurance Code and any other statutory or applicable case law;

9 21. The rights and liabilities of claimants, creditors, shareholders, policyholders, escrow
10 holders and all other persons interested in the assets of Merced, including the State of California,
11 are fixed as of the date of the entry of this order;

12 22. All funds and accounts in the name of Merced in various banks or any other institutions
13 wherever situated are vested in the Commissioner as Liquidator and subject to withdrawal at his
14 direction only and this order does not convert funds held in a fiduciary capacity to general assets
15 of the Liquidator;

16 23. All persons are enjoined, except with leave of court issued after a hearing in which the
17 Commissioner as Liquidator has received reasonable notice, from obtaining preferences,
18 judgments, attachments or other liens, or making any levy against Merced or its assets or
19 property, and from executing or issuing or causing the execution or issuance of any court
20 attachment, subpoena, replevin, levy, execution, or other process for the purpose of impounding
21 or taking possession of or interfering with or creating or enforcing a lien upon any property or
22 assets owned or in the possession of Merced or its affiliates if any, or the Liquidator, wherever
23 situated, and from doing any act interfering with the conduct of said business by the
24 Commissioner as Liquidator;

25 24. All persons are enjoined, except with leave of court issued after a hearing in which the
26 Commissioner as Liquidator has received reasonable notice, from accelerating the due date of any
27 obligation or claimed obligation; exercising any right of set-off; taking, retaining, retaking or
28 attempting to retake possession of any real or personal property; withholding or diverting any rent

1 or other obligation; doing any act or other thing whatsoever to interfere with the possession of or
2 management by the Commissioner as Liquidator of the property and assets, owned or controlled
3 by Merced or in the possession of Merced; or in any way interfering with the Commissioner as
4 Liquidator or interfering with the exclusive jurisdiction of this Court over Merced or its assets;

5 25. Merced, its officers, directors, governors, agents and employees are enjoined from
6 transacting any of the business of Merced, whether in the State of California or elsewhere, or
7 from disposing of or assisting any person in the transfer or alienation of the property or assets of
8 Merced until further order of this Court;

9 26. All persons are enjoined from (a) instituting, prosecuting or maintaining any action at
10 law or suit in equity (including but not limited to actions or proceedings to compel discovery or
11 production of documents or testimony and matters in arbitration) against Merced or against the
12 Commissioner as Liquidator of Merced, (b) attaching, executing foreclosure upon, redeeming of
13 or taking any other legal proceedings against, any of the property or assets of Merced, and (c)
14 interfering with the conduct of said business by the Commissioner as Liquidator, except upon
15 order from this Court obtained after reasonable notice to the Commissioner as Liquidator;

16 27. The application of all provisions of any agreement entered into by and between any
17 third party and Merced shall be stayed, including, but not limited to, the following types of
18 agreements (as well as any amendments, assignments, or modifications thereto): financial
19 guarantee bonds, promissory notes, loan agreements, security agreements, deeds of trust,
20 mortgages, indemnification agreements, subrogation agreements, subordination agreements,
21 pledge agreements, assignments of rents or other collateral, financial statements, letters of credit,
22 leases, insurance policies, guaranties, escrow agreements, management agreements, real estate
23 brokerage and rental agreements, servicing agreements, attorney agreements, consulting
24 agreements, easement agreements, license agreements, franchise agreements, or employment
25 contracts, which provide in any manner that selection, appointment or retention of a conservator,
26 or trustee by any court, or entry of an order such as hereby made, shall be deemed to be, or
27 otherwise operates as a breach, violation, event of default, termination, event of dissolution, event
28 of acceleration, insolvency, bankruptcy, or liquidation (collectively, an "Ipso Facto Provision").

1 The assertion of any and all rights and remedies relating to an Ipso Facto Provision or any similar
2 such provision shall also be stayed and barred, except as otherwise ordered by this Court, and this
3 Court shall retain jurisdiction over any such cause of action that has arisen or may otherwise arise
4 under any such provision;

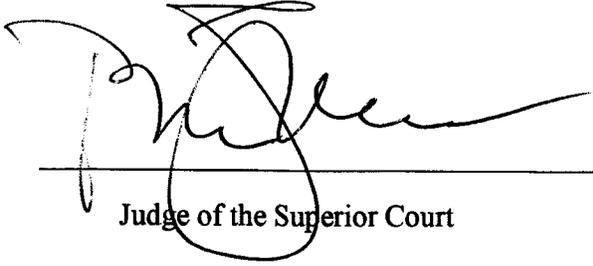
5 28. All persons are enjoined from interfering with the possession, title and rights of the
6 Commissioner as Liquidator in and to the property and assets of Merced and from interfering with
7 the conduct of the Commissioner as Liquidator in the handling and disposition of the property and
8 assets of Merced and in the winding up of the business of Merced, except upon order of this Court
9 obtained after reasonable notice to the Commissioner as Liquidator;

10 29. All persons are enjoined from the waste of the assets of Merced;

11 30. Any and all claims against Merced (except those policyholder claims that are already
12 pending against Merced, which are deemed filed) including those which in any way affect or seek
13 to affect any of the assets of Merced, wherever or however such assets may be owned or held,
14 must be filed by no later than June 30, 2019 (the "Claims Bar Date"), together with proper proof
15 thereof, in accordance with the provisions of Insurance Code section 1010, et seq., including, but
16 not limited to section 1023, and any claims not filed by the Claims Bar Date shall be conclusively
17 deemed forever waived; and

18 31. Upon issuance of this order, the Commissioner as Liquidator is directed to give notice
19 to all shareholders and potential creditors of Merced of the claims procedure outlined in
20 paragraph 30 above.

21
22 Dated: DEC 3 2018

23 
24 _____
25 Judge of the Superior Court
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THE FOREGOING INSTRUMENT IS A CORRECT COPY
OF THE ORIGINAL ON FILE IN THIS OFFICE.

ATTEST:
CLERK OF THE SUPERIOR COURT OF CALIFORNIA
COUNTY OF MERCED

By Melinda Deputy

DEC 08 2018