

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
2 IN AND FOR THE COUNTY OF SAN MATEO

3 INSURANCE COMMISSIONER OF THE  
4 STATE OF CALIFORNIA,

5 Applicant,

6 v.

7 CALIFORNIA INSURANCE COMPANY, a  
8 California corporation,

9 Respondent.

) Case No.: 19-CIV-06531

) Assigned for All Purposes to Hon. Danny Y. Chou

) **ORDER GRANTING MOTION FOR LEAVE  
TO CONDUCT DISCOVERY**

**FILED**  
**SAN MATEO COUNTY**

APR 26 2021

Clerk of the Superior Court

By

DEPUTY CLERK

12 On November 4, 2019, this Court appointed Applicant the Insurance Commissioner of California  
13 (Commissioner) the Conservator of Respondent California Insurance Company (CIC) pursuant to  
14 Insurance Code section 1011. (See Order Appointing Ins. Comr. as Conservator and Restraining  
15 Orders.) On October 19, 2020, the Commissioner filed an Application for Order Approving  
16 Rehabilitation Plan (Rehabilitation Application). CIC filed this Motion for Leave to Conduct Discovery  
17 (Motion) on March 11, 2021.

18 The Court heard CIC's Motion on April 22, 2021 at 2:00 p.m. Michael Strumwasser and Cynthia  
19 Larsen appeared on behalf of the Commissioner. Shand Stephens appeared on behalf of CIC. Having  
20 considered all papers filed in support of and in opposition to the Motion, oral arguments of the parties,  
21 all testimony and evidence presented at the hearing, and all other pleadings and papers on file herein, the  
22 Court grants the Motion.

23 **BACKGROUND**

24 On November 4, 2019, the Commissioner filed a Verified Ex Parte Application for Order  
25 Appointing Insurance Commissioner as Conservator (Conservator Application). The Court granted the  
26 Conservator Application on that same day and appointed the Commissioner the conservator of CIC  
27 pursuant to Insurance Code section 1011, subdivision (c). (Order Appointing Insurance Commissioner  
28 as Conservator and Restraining Order (Appointment Order), p. 1.) Paragraph 17 of the order prohibited

1 in relevant part “[a]ll persons . . . from instituting, prosecuting, or maintaining any . . . actions or  
2 proceedings to compel discovery or production of documents or testimony, . . . except after an order of  
3 this Court obtained after reasonable notice to the Conservator.” On August 11, 2020, the Court denied  
4 Respondents’ Verified Application to Vacate the November 4 Order Appointing the Commissioner as  
5 Conservator. (Order Denying Resp.’s Verified App. To Vacate the Nov. 4 Order Appointing the Comr.  
6 as Conservator, ex. A.)

7 In July 2020, CIC served discovery on the Commissioner without seeking leave of the Court. On  
8 September 15, 2020, the Court granted the Commissioner’s Motion to Enforce, Motion to Quash and  
9 Motion for a Protective Order because “Paragraph 17 of the Conservation Order prohibits discovery on  
10 its face, absent leave of Court. There is no dispute that leave of Court was not sought in this instance.”

11 On October 19, 2020, the Commissioner filed the Rehabilitation Application pursuant to  
12 Insurance Code section 1043.

13 On March 11, 2021, CIC filed this Motion.

#### 14 DISCUSSION

15 In its Motion, CIC seeks leave to “serve” the following discovery requests (CIC’s Motion for  
16 Leave to Conduct Discovery, at p. 1):

- 17 (1) deposition notices for the three individuals who submitted declarations in support the  
18 Rehabilitation Plan;
- 19 (2) a deposition notice for the individual who verified the Commissioner’s ex parte conservator  
20 application;
- 21 (3) requests for the production of documents covering four topics relating to the Commissioner’s  
22 decision to pursue a conservatorship of CIC and the Rehabilitation Plan; and
- 23 (4) a deposition notice for the person most knowledgeable (PMK) on those four topics.

24 The Commissioner does not contest CIC’s right to receive documents pertaining to the fourth  
25 topic – the “grounds for all the provisions” of the Rehabilitation Plan. The Commissioner also does not  
26 contest CIC’s right to depose the three individuals who submitted declarations in support of the Plan but  
27 seeks to limit the scope of those depositions to their declarations. The Commissioner does, however,  
28 challenge CIC’s right to serve the remaining discovery. In particular, the Commissioner contends that

1 leave to serve the three remaining document requests and the remaining two deposition notices should  
2 be denied because they are overbroad and irrelevant. As explained below, the Court finds that CIC  
3 should be given leave to serve the disputed discovery.

4 As a threshold matter, the Court finds that the Civil Discovery Act (Act) applies to this  
5 conservator proceeding. “By its terms . . . the [Act] applies to both ‘civil action[s] and . . . special  
6 proceeding[s] of a civil nature.’” (*City of Los Angeles v. Superior Court* (2017) 9 Cal.App.5th 272, 284;  
7 see also Code Civ. Proc., §§ 2016.020, subd. (a) & 2017.010.) As a result, “absent a statutory exemption  
8 precluding discovery, the [Act] applies ‘to every civil action and special proceeding of a civil nature.’”  
9 (*City of Los Angeles*, at p. 285, emphasis added.) “A special proceeding of a civil nature is ‘[a] type of  
10 case which was not, under the common law or equity practice, either an action at law or a suit in equity.’”  
11 ” (*People v. Superior Court (Cheek)* (2001) 94 Cal.App.4th 980, 988 (*Cheek*)). “A special proceeding  
12 has reference only to such proceedings as may be commenced independently of a pending action by  
13 petition or motion upon notice in order to obtain special relief.” (*Ibid.*)

14 Applying these definitions, this conservator proceeding is undoubtedly a “special proceeding of a  
15 civil nature.” (Code Civ. Proc., § 2016.020; see also *Cheek, supra*, 94 Cal.App.4th at p. 988.) Indeed,  
16 the California Supreme Court said so many decades ago. (See *Carpenter v. Pacific Mutual Life Ins. Co.*  
17 (1937) 10 Cal.2d 307, 327 [holding that “the proceedings here involved [-- conservator proceedings --]  
18 are obviously special proceedings”].) Thus, the Act applies unless there is a statutory exemption. But  
19 none appears to exist here. The Insurance Code is silent as to discovery rights, and nothing in that Code  
20 appears to exempt this conservator proceeding from the purview of the Act. The only statute cited by the  
21 Commissioner is Insurance Code section 1020. But nothing in section 1020 expressly or impliedly states  
22 that conservator proceedings are exempt from the Act. Even though section 1020, subdivision (a) may  
23 apply to discovery if it “interfer[es] with the commissioner or the proceeding,” Petitioner provides no  
24 evidence that the requested discovery would do so. In any event, the Court could not find, and Petitioner  
25 did not cite, a single case even suggesting that the Act does not apply to conservator proceedings. To the  
26 contrary, several cases suggest that discovery is routinely permitted without any special or unusual  
27 limitations in conservator proceedings. (See, e.g., *Texas Commercial Bank v. Garamendi* (1994) 28  
28 Cal.App.4th 1234, 1239; *Roddis v. Strong* (1967) 62 Cal.App.2d 304, 306.)

1 The Court's ruling on CIC's anti-SLAPP motion does not compel a contrary conclusion. That  
2 ruling related to the applicability of Part 2 of the Code of Civil Procedure – and not Part 4, which  
3 contains the Act. And unlike Part 2 – which limits its provisions to civil “action[s]” under Code of Civil  
4 Procedure section 22, rather than “special proceeding[s]” under section 23 – the Act found in Title 4,  
5 Part IV of the Code of Civil Procedure broadly defines “action” to include “special proceedings” like  
6 this conservator proceeding. (See Code Civ. Proc., § 2016.020.)

7 Finally, the cases cited by the Commissioner at the hearing – *Anderson v. Great Republic Life*  
8 *Ins. Co.* (1940) 41 Cal.App.2d 181 and *McConnell v. All-Coverage Ins. Exchange Automobile and Fire*  
9 (1064) 229 Cal.App.2d 735 – are inapposite. Both of those cases addressed the power of the court to  
10 award attorney fees, expenses, or costs from the assets of the conservatee in a conservator proceeding  
11 under the Insurance Code. Neither considered the applicability of the Act to such a proceeding, or the  
12 meaning of the phrase “special proceedings of a civil nature” as used in the Act. Even though those  
13 cases held that “the jurisdiction of the court is limited by the provisions of the statute governing the  
14 proceedings,” this does not help the Commissioner because nothing in the Insurance Code limits the  
15 applicability of the Act. (*Anderson*, at p. 189; *McConnell*, at p. 741.)

16 Applying the Act here, the Court sees no basis for denying CIC leave to serve the disputed  
17 discovery. The main argument against granting the Motion asserted by the Commissioner is that the  
18 disputed discovery is irrelevant and overbroad. But the three categories of documents in dispute appear  
19 to be relevant to the Commissioner's request for approval of the Rehabilitation Plan. For example,  
20 discovery into the grounds for the conservatorship is relevant, because the Plan is supposed “to resolve  
21 the issues requiring the Conservation Proceeding.” (Rehab. Plan, Recital C.) Indeed, California Courts  
22 have rejected a proposed rehabilitation plan because its provisions had nothing to do with the reason for  
23 the conservator proceeding – i.e., the “insolvency” of the conservator. (See *Commercial Natl. Bank v.*  
24 *Superior Court* (1993) 14 Cal.App.4th 393, 410.) Likewise, the process used by the Commissioner to  
25 develop the Rehabilitation Plan may be relevant for determining whether any of its provisions are  
26 “arbitrary.” (*Garamendi v. Golden Eagle Ins.* (2005) 127 Cal.App.4th 480, 485.) Finally, to the extent  
27 that the disputed categories include documents that are not relevant, these concerns can be addressed  
28 through meet and confer, informal discovery conferences, and motions to compel, if necessary.

1 The Commissioner's claim of undue burden and delay also does not support denying CIC leave  
2 to serve the disputed discovery where, as here, the Commissioner provides no evidence to support his  
3 claim. For example, the Commissioner does not identify the volume of documents being sought by CIC  
4 or the amount of time that it would take the Commissioner to produce those documents. Absent some  
5 evidence to support this claim, the Court cannot deny CIC leave to serve discovery that otherwise seeks  
6 relevant information, much less conclude that the requested discovery would interfere with "the  
7 commissioner or the proceeding." (Ins. Code, § 1020, subd. (a).)

8 Because the topics covered by the document requests appear to be relevant, leave to serve the  
9 PMK deposition notice also cannot be denied. Indeed, the Commissioner's concession that the fourth  
10 document request is proper necessarily establishes that a PMK deposition relating to that request is also  
11 proper. Likewise, the deposition of Henley, the person who verified Petitioner's ex parte conservator  
12 application, is relevant because the Rehabilitation Plan must be related to the grounds for the  
13 conservatorship. Finally, Petitioner has provided no grounds for placing any limitations on the three  
14 depositions of the declarants beyond the limitations otherwise placed on those depositions by the Act.

15 In granting CIC leave to serve the requested discovery, however, the Court is not holding that  
16 CIC is entitled to all of the discovery it seeks to serve *without limitation*. "[T]he right to civil discovery  
17 in special proceedings of a civil nature remains subject to the trial court's authority to manage  
18 discovery." (*Cheek, supra*, 94 Cal.App.4th at p. 988.) Thus, discovery must still be "relevant to the  
19 subject matter." (Code Civ. Proc., § 2017.010.) And in this conservator proceeding, the purpose of any  
20 discovery sought by the parties must therefore relate to whether the Rehabilitation Plan is "reasonably  
21 related to the public interest" and not "arbitrary or improperly discriminatory." (*Golden Eagle, supra*,  
22 127 Cal.App.4th at p. 484-485, internal quotations omitted.) Finally, in determining the proper scope of  
23 discovery, "the trial court must keep in mind both the narrow scope of permissible discovery and the  
24 need for expeditious adjudication." (*Cheek*, at p. 991.)

25 Here, the Commissioner has not had the opportunity to respond to CIC's discovery requests or  
26 assert any objections. Thus, in accordance with the Act, the Commissioner may still respond to the  
27 discovery requests after they have been served and assert any applicable privileges and objections. And  
28

1 any disputes over those privileges and objections are subject to the usual procedures for resolving them,  
2 including meet and confer, informal discovery conferences, and motions to compel.

3 Finally, in granting this Motion, the Court is only authorizing CIC to serve the document  
4 requests and deposition notices listed in paragraph 4 and exhibits A through F of the Declaration of  
5 Shand Stephens.

6 **ORDER**

7 Based on the foregoing, IT IS HEREBY ORDERED that CIC's Motion is GRANTED. CIC may  
8 serve the document requests and deposition notices listed in paragraph 4 and exhibits A through F of the  
9 Declaration of Shand Stephens. The Commissioner may respond to those discovery requests in  
10 accordance with the provisions of the Civil Discovery Act.

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12  
13 Dated: April 26, 2021



Danny Y. Chou  
Judge of the Superior Court

