

1 EDMUND G. BROWN JR.
Attorney General of California
2 JOYCE E. HEE
Supervising Deputy Attorney General
3 State Bar No. 88610
1515 Clay Street, 20th Floor
4 P.O. Box 70550
Oakland, CA 94612-0550
5 Telephone: (510) 622-2227
6 Fax: (510) 622-2121
E-mail: Joyce.Hee@doj.ca.gov

7 *Attorneys for Applicant*
8 *Steve Poizner, Insurance Commissioner*
as Liquidator of Citation General Insurance Co.

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 CITY AND COUNTY OF SAN FRANCISCO

12
13 **INSURANCE COMMISSIONER OF THE**
STATE OF CALIFORNIA,

14 Applicant,

15 v.

16
17 **CITATION GENERAL INSURANCE**
COMPANY, a California corporation,

18 Respondent.

Case No. CPF-95-972164

NOTICE OF APPLICATION AND
APPLICATION OF INSURANCE
COMMISSIONER, AS LIQUIDATOR,
FOR AN ORDER APPROVING THE
FINAL REPORT AND ACCOUNTING,
AND FINAL DISTRIBUTION OF
ASSETS OF THE ESTATE OF
CITATION GENERAL INSURANCE
COMPANY

Date: August 18, 2010

Time: 9:30 a.m.

Dept: 302

Judge: Hon. Charlotte W. Woolard

No trial date

Action filed:

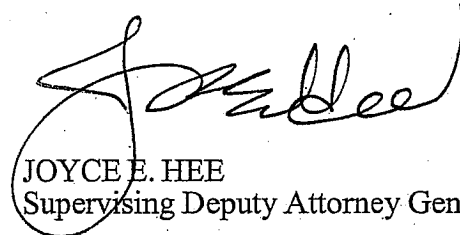
19
20
21
22
23
24 **PLEASE TAKE NOTICE** that on August , 2010, at 9:30 a.m., or as soon thereafter as
25 the matter can be heard before the Honorable Charlotte W. Woolard, Judge Presiding, in
26 Department 302 of this Court, Applicant Steve Poizner, Insurance Commissioner of the State of
27 California, as Liquidator of Respondent Citation General Insurance Company, will and hereby
28

1 does apply to the Court for an order approving the Insurance Commissioner's Final Report and
2 Accounting and his proposed Final Distribution of Assets of the estate of Citation General in the
3 above-entitled liquidation proceeding. The application will be based on this notice and
4 application, the accompanying memorandum of points and authorities, the supporting
5 declarations of Mark Akamine, Robert Fernandez, Michele Vass, and Raymond Minehan and
6 exhibits attached thereto, the files and pleadings in this case, and such oral argument as may be
7 made in support of the application at the hearing on this matter.
8

9 Dated: July 13, 2010

Respectfully Submitted,

EDMUND G. BROWN JR.
Attorney General of California

12
13
14
15

JOYCE E. HEE
Supervising Deputy Attorney General

*Attorneys for Applicant Steve Poizner,
Insurance Commissioner, as Liquidator of
Citation General Insurance Company*

1 **APPLICATION FOR APPROVAL OF FINAL REPORT AND ACCOUNTING**
2 **AND FINAL DISTRIBUTION OF ASSETS OF CITATION GENERAL**

3 Applicant Steve Poizner, Insurance Commissioner of the State of California
4 ("Commissioner"), in his capacity as Liquidator of Citation General Insurance Company
5 ("Citation General"), respectfully states as follows:

6 **FACTUAL BACKGROUND**

7 Respondent Citation General was a corporation duly organized and existing under, and by
8 virtue of, the laws of the State of California. Under a Certificate of Authority issued by the
9 Commissioner in his regulatory capacity, Citation General was authorized to transact the
10 following types of insurance business: fire, marine, surety, disability, plate glass, liability,
11 workers' compensation, common carrier liability, boiler and machinery, burglary, sprinkler, team
12 and vehicle, automobile, aircraft, and miscellaneous insurance.

13 Pursuant to Insurance Code sections 700.01-700.025, Citation General was required to
14 have unimpaired paid-in-capital and surplus of not less than \$2,200,000.¹ Citation General's
15 financial statements for the period ending March 31, 1995 showed that it had liabilities of
16 \$35,573,711 and assets of \$29,740,600, which resulted in a capital and surplus of negative
17 \$5,833,111, which is below the \$2,200,000 paid-in-capital required by the Insurance Code.
18
19 (Declaration of Robert Fernandez, ¶ 6.)

20
21 The Commissioner in his regulatory capacity conducted a limited-scope examination of
22 Citation General. This examination resulted in an adjustment to Citation General's liabilities to
23 \$43,594,605 and an adjustment of assets to \$28,912,257. This adjustment produced a surplus as
24 regards policyholders of negative \$14,682,348. (Declaration of Robert Fernandez, ¶7.)

25
26 Accordingly, the Commissioner filed an application for the conservation of Citation
27

28 ¹ All section references are to the Insurance Code unless otherwise indicated.

1 General pursuant to section 1011. On June 21, 1995, the Superior Court for the County of Santa
2 Clara issued an order of conservation and appointed the Commissioner as Conservator of Citation
3 General. (Declaration of Robert Fernandez, ¶8.)

4 On August 24, 1995, pursuant to section 1011, and upon the Commissioner's application
5 and Citation General's stipulation, the Santa Clara Superior Court issued an order terminating the
6 Commissioner's appointment as Conservator and appointing him the Liquidator of Citation
7 General. (Declaration of Robert Fernandez ¶ 9.)

8 On that same date, the Commissioner's application under section 1040 was granted, and
9 the Santa Clara Superior Court ordered a change of venue from Santa Clara County to the County
10 of San Francisco. (Declaration of Robert Fernandez, ¶10.)

11 LIQUIDATOR'S FINAL REPORT AND ACCOUNTING

12 The Commissioner has now completed the liquidation of Citation General. (Declaration
13 of Robert Fernandez, ¶ 11.) All claims have been adjusted. In addition, all reinsurance has been
14 collected and/or written off. (*Ibid.*) All assets have been marshaled and all administrative tasks
15 have been completed. (*Ibid.*)

16 A. Financial Statements

17 The financial statements for Citation General for the period July 21, 1995 (date of
18 conservation) to May 31, 2010, are attached as Exhibit A to the supporting Declaration of
19 Raymond Minehan. (Mr. Minehan is the Chief Financial Officer of the Commissioner's
20 Conservation & Liquidation Office.) These financial statements include the Statement of Assets
21 and Liabilities of Estate in Liquidation and the Statement of Income and Expenses.

22 These financial statements show that as of May 31, 2010, Citation General had assets in
23 the total amount of \$11,537,235 and liabilities in the total amount of \$2,807,877, which results in
24 net assets of \$8,729,357. (Declaration of Raymond Minehan, ¶ 3, and Exhibit A thereto.)

1 In summary, from the date of conservation to May 31, 2010, the Citation General estate
2 incurred the following expenses:

3	General and administrative expenses:	\$800,954
4	Professional fees:	\$1,688,342
5	Legal fees:	\$156,916
6	Depreciation & amortization:	\$29,252
7	Allocated expenses:	\$4,862,073
8	Bad debt expenses:	\$4,048,437

9
10 (Declaration of Raymond Minehan, ¶ 5.)

11 **B. Claims**

12 Pursuant to section 1021, the Commissioner published notices to creditors that claims
13 against the insolvent estate of Citation General had to be filed by no later than the Claims Bar
14 Date of March 13, 1996. (Declaration of Michele Vass ¶ 3.) Upon the Liquidator's application,
15 on March 28, 1996, the Court authorized an extension of the Claims Bar Date to September 15,
16 1996. (*Ibid.*)

17
18 The Liquidator mailed approximately 40,163 Proof of Claim ("POC") forms to persons
19 possibly interested in making a claim against Citation General. (Declaration of Michele Vass
20 ¶ 4.) There were 2,650 POC forms that were timely filed. (*Ibid.*) The claims that were covered by
21 California Insurance Guarantee Association ("CIGA") were forwarded to CIGA. (*Ibid.*)

22
23 The Liquidator completed the substantive review of all 2,650 POCs that were timely filed.
24 (Declaration of Michele Vass ¶ 5.) This total includes "non-covered" and "overcap" claims.²

25 The Commissioner approved 83 of the 2,650 claims, and the amount approved for these

26
27 ² "Non-covered" claims are those claims that are not covered by an insurance guaranty
28 association. (§ 1063.1, subd. (c). "Overcap" claims are those claims that exceed CIGA's
statutory limit of \$500,000. (§ 1063.1, subd. (c)(7).)

1 83 claims is \$19,774,123.34. (Declaration of Michele Vass ¶ 5.) Of the 83 approved POCs, there
2 were 19 Class 5 approved claims for a total \$17,961,559.46. (*Id.* at ¶ 6.) Of this amount,
3 \$17,372,631.55 (88%) was approved for CIGA. (*Ibid.*) There was no other insurance guaranty
4 association that had a claim against Citation General. (*Ibid.*) The other 64 POCs were Class 6
5 (general creditors) claims, and they were approved for a total of \$1,812,563.88. (Declaration of
6 Michele Vass ¶ 7.) The Liquidator rejected 1,885 POCs and another 682 were closed due to bad
7 addresses or they were forwarded to CIGA. (*Id.* at ¶ 8.) In summary, all claims against the estate
8 have been reviewed and final determinations have been made. The time to challenge those
9 determinations has expired pursuant to section 1032. (*Id.* at ¶ 9.)

11 **C. Reinsurance**

12 Over the course of the conservation and liquidation of Citation General, the Liquidator
13 billed \$ 4,511,968.79 and collected \$10,610,724.48 in reinsurance. At the time Citation General
14 was liquidated, there was a balance of \$ 6,113,737.16 in reinsurance receivables. The final
15 reinsurance transactions will be completed in June 2010. (Declaration of Mark Akamine, ¶ 3.)

17 **D. Tax Issues**

18 Citation General Insurance Company qualifies as a property and casualty insurance
19 company for federal income tax purposes. (Declaration of Raymond Minehan, ¶ 6.) Citation
20 General is currently a member of a consolidated group of corporations for which PICO Holdings,
21 Inc. ("PICO Holdings") is the common parent. As the common parent, PICO Holdings is solely
22 responsible under the Internal Revenue Code and underlying regulations for filing a federal
23 income tax return which includes all of its member companies. As the common parent, PICO
24 Holdings is the sole agent for each member of the group for matters relating to the tax liability for
25 the consolidated return. (Treas. Reg., 26 C.F.R. §1.1502-77(a) (2009).) Therefore, under these
26 regulations, a member of a consolidated group is not generally permitted to file a separate federal
27
28

1 income tax return.

2 With the exception of tax years 2004 through 2008, Citation General has been a member
3 of the PICO Holdings consolidated group since at least 1995.

4 As noted in the previously filed Verified Application of Insurance Commissioner for
5 Order Approving an Interim Distribution of Assets to Approved Claimants dated December 5,
6 2008, the Commissioner was reviewing Citation General's potential tax liability for tax years
7 1995 through 2003. (Declaration of Raymond Minehan, ¶ 7.) It came to the Commissioner's
8 attention that PICO Holdings had not properly included the respective income or loss of Citation
9 General in its consolidated returns for tax years 1998 through 2003, but that a consolidated
10 federal income tax return which included amounts allocable to other members of its consolidated
11 group was timely filed for these years. The potential tax liability arose from questions about
12 whether Citation General's operating income or losses and tax net operating loss carry-forwards if
13 properly included in the consolidated tax returns of its parent PICO Holdings would have resulted
14 in a material liability to PICO or to Citation General as a member of the PICO consolidated
15 group. (*Ibid.*)

16 Revenue Upon review, the Commissioner's tax advisors have determined that for tax years
17 1995 through 2003, Citation General has no further tax liability. (Declaration of Raymond
18 Minehan
19 ¶ 8.)

20 For the tax years 2004 through 2007, Citation General qualified as a tax-exempt
21 corporation under section 501(c)(15) of the Internal Revenue Code and was required to file a
22 separate Form 990 "Return of Organization Exempt from Tax." (Declaration of Raymond
23 Minehan ¶ 9.) For 2008, it was prohibited from joining in the PICO Holdings consolidated group
24 as a result of a special 5-year waiting period for rejoining a consolidated group in section
25
26
27
28

1 1504(a)(3) of the Internal Code. (*Ibid.*) Citation General filed a Form 1120-PC "U.S. Property
2 and Casualty Insurance Company Income Tax Return" for that year. (*Ibid.*)

3 The Commissioner plans to close the Citation estate in 2010 and has reserved a total of
4 \$132,416, which is believed to be sufficient to pay the tax liability for tax years 2009 and 2010.

5 (Declaration of Raymond Minehan ¶ 10.)
6

7 **E. Legal Matters**

8 All legal matters have been resolved. (Declaration of Robert Fernandez, ¶12.)

9 Of note, the most extensive litigation with which the Commissioner was involved was a matter
10 that was already well under way at the time of liquidation. In the case of *The Canadian*
11 *Indemnity Company* [Citation General's former name] v. *Fireman's Fund Insurance Company, et*
12 *al.*, Los Angeles Superior Court No. C570821 (consolidated with Case Nos. C611455, C612597,
13 C614593, C614636, C619591, C619592, C621612, C650889, C68129-28, SWC78226, and
14 SWC945527), the Commissioner incurred significant legal expenses and expended significant
15 staff resources for over eight years. (*Ibid.*) This case involved over a dozen parties. The
16 underlying litigation was first brought almost 20 years before the company was placed into
17 liquidation. The parties settled the case out of court in 2002. (*Ibid.*) The Liquidator received
18 \$775,000 in the settlement. (*Ibid.*)
19

20
21 **F. Early Access Distribution of Assets to CIGA**

22 On March 17, 1997, pursuant to section 1035.5, and upon the Commissioner's
23 application, this Court authorized an Early Access Distribution of general assets to CIGA of
24 \$ 9,655,000. (Declaration of Raymond Minehan ¶ 11.)

25 **G. Interim Distribution of Assets to CIGA and Other Class 5 Claimants**

26 On December 5, 2008, pursuant to section 1033, and upon the Commissioner's
27 application, this Court authorized an Interim Distribution of Assets to Approved Claimants. (See
28

1 Order Approving An Interim Distribution of Assets To Approved Claimants entered herein on
2 December 5, 2008, and Declaration of Raymond Minehan ¶12.) CIGA received \$6,920,530., and
3 the other Class 5 claimants received a total of \$557,136 in the 2008 Interim Distribution.
4 (Declaration of Raymond Minehan ¶13.) The total amount distributed to the Class 5 claimants
5 equaled approximately 95.4% of their approved claim.³
6

7 PROPOSED FINAL DISTRIBUTION OF ASSETS

8 The Commissioner is authorized by section 1033 to make a distribution of assets on
9 claims in a statutory insolvency proceeding in accordance with the priorities specified therein. As
10 discussed previously, the Commissioner has made a final determination as to all timely filed
11 claims, and all estate assets have been marshaled. The Commissioner now proposes to make a
12 pro rata distribution of those assets to claimants under section 1033 on all allowed claims.
13 Specifically, in accordance with section 1033 (as it was enacted at the time of the
14 Commissioner's appointment as Liquidator of Citation General in August 1995)⁴, the
15 Commissioner proposes to make a final distribution of Citation General's assets to the following
16 classes of approved claimants: Class 1 (expenses of administration); Class 5 (insurance guaranty
17 association and policyholder claims); and Class 6 (all other claims).
18

19 Section 1033 requires the equitable distribution of an insolvent insurer's assets among all
20 claimants similarly situated, i.e., in the same priority class. Thus, claimants in a lower priority
21 class are not entitled to any distribution until claimants in a higher priority class have been fully
22 paid. Claimants within the same class are entitled to share pro rata in the distribution to that
23

24 ³ This calculation includes the amount CIGA received in the Early Access Distribution in
25 1997.

26 ⁴ At the time of Citation General's liquidation, section 1033, which sets forth the claim
27 priorities, designated CIGA and policyholder claims as Class 5. Section 1033 has since been
28 amended. The current version of section 1033 designates CIGA and policyholder claims as
Class 2. Citation General must abide by the claim priority statute that was in effect in 1995
because section 1019 mandates that the rights and liabilities of an insolvent insurer and its
creditors and policyholders are vested as of the date the liquidation order is entered.

1 class. (*Commercial Nat. Bank v. Superior Court (Garamendi)* (1993) 14 Cal.App.4th 393, 398.)

2 The Liquidator proposes to distribute a total of \$11,010,196.23 in this Final Distribution,
3 as follows.

4 (1) With this Final Distribution, all Class 5 claimants will have received 100% of their
5 approved claim, plus interest.

6 (2) CIGA will receive \$797,101.50 plus \$7,849,538.57 in interest for a total of
7 \$8,646,640.07.

8 (3) The other Class 5 claimants will receive \$31,792.13 plus \$519,200.15 in interest for
9 a total of \$550,992.28.

10 (4) The Class 6 claimants will receive 100% of their approved claims, which totals
11 \$1,812,563.88.

12 (See Declaration of Raymond Minehan and Exhibit B (list of approved claimants) and Exhibit C
13 (distribution calculations and interest calculations for Final Distribution), attached thereto.)

14 **Records Retention**

15 The Liquidator proposes to maintain some of Citation General's records in the
16 Conservation & Liquidation Office's imaged databases. (Declaration of Robert Fernandez ¶ 13.)
17 The majority of the records will be maintained in hardcopy format at a storage warehouse. (*Ibid.*)
18 The Liquidator proposes to maintain these records for three years from the Court's order, and
19 thereafter will destroy said records, except for those records necessary for examination or audit by
20 the Department of Finance or other auditor. (*Ibid.*)

21 **Closing Budget**

22 The Liquidator proposes to reserve \$311,245 to pay Administrative Expenses for the next
23 three years. (Declaration of Robert Fernandez ¶ 14.) The Administrative Expenses include
24 storage and destruction of records, legal expenses, audit expenses, tax consultation and
25

1 preparation, and indirect expenses. (*Ibid.*)

2 WHEREFORE, the Insurance Commissioner prays for an order that provides as follows:

3 1. The Final Report and Account of Conservator and Liquidator for the period from
4 July 21, 1995, to May 31, 2010, is settled and approved;

5 2. The Commissioner is authorized to distribute approximately \$11,010,196.23 to
6 approved Class 5 and Class 6 claimants. The amount available for distribution is subject to
7 adjustment for investment income and changes in the market value of investments that have been
8 posted as of the date the investments are withdrawn from the investment pool. The distributions
9 shall be made within two weeks of receipt of the signed order from the Court;

10 3. The Commissioner is authorized to retain (1) the sum of \$ 311,245.00 for
11 payment of administrative expenses incurred by the Commissioner from May 1, 2010, to May 1,
12 2011, for administrative and closing costs and (2) the sum of \$132,416 for accrued and estimated
13 tax liability. The Commissioner is authorized to pay any excess closing and administrative costs
14 out of the funds appropriated for the maintenance of the Department of Insurance. A report to the
15 Court of the expenditure of these funds shall not be required;

16 5. In accordance with the six month waiting period of the Code of Civil Procedure
17 section 1517, the Commissioner, as to disbursements that are either undeliverable or as to which
18 issued checks have not then been negotiated, is authorized to void such checks as have not then
19 been negotiated and escheat all undeliverable amounts and amounts of non-negotiated checks to
20 the Insurance Fund pursuant to section 12937;

21 6. The Commissioner is authorized to maintain in the Conservation & Liquidation
22 Office imaged databases all records of Citation General for a period of three years from the date
23 of the Court's order, and thereafter the Commissioner is authorized to destroy all records of
24 Respondent Citation General, except for those records necessary for examination by the
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

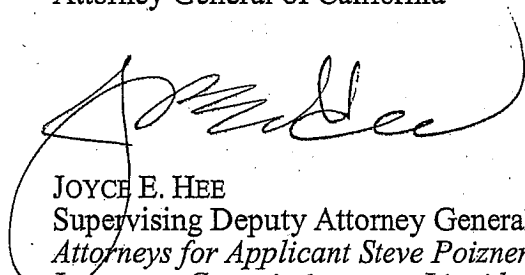
Department of Finance or other auditor of the Commissioner's books and records pursuant to section 1061;

7. The Commissioner is authorized to take any action necessary to accomplish the purpose of this Order; and

8. The estate of Citation General shall be closed and the Commissioner shall be discharged as liquidator upon the filing of a declaration that the Commissioner has distributed the assets of Citation General in accordance with this Court's order approving final distribution. The Commissioner, his Special Deputies, the Conservation and Liquidation Office, its employees, the California Department of Insurance, and its personnel, and the Commissioner's agents and attorneys, shall be, upon such filing, DISCHARGED from any and all claims, debts, liabilities, or duties to further account for the assets or liabilities of Citation General through the date of the declaration, and shall have no liability of any kind or nature for such claims or debts.

Dated: July 13, 2010

Respectfully Submitted,
EDMUND G. BROWN JR.
Attorney General of California



JOYCE E. HEE
Supervising Deputy Attorney General
*Attorneys for Applicant Steve Poizner,
Insurance Commissioner, as Liquidator of
Citation General Insurance Company*

SF2008900558
90151967.doc