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ORIGINAL FILED  
Superior Court of California  
County of Los Angeles

MAY 09 2014

Sherri R. Carter, Executive Officer/Clerk  
By \_\_\_\_\_ Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES  
CENTRAL CIVIL WEST

INSURANCE COMMISSIONER OF THE  
STATE OF CALIFORNIA,

Applicant,

v.

FREMONT INDEMNITY COMPANY,

Respondent.

CASE NO. BS083582

**TENTH VERIFIED APPLICATION FOR  
ORDER APPROVING LIQUIDATOR'S  
PROPOSAL TO DISBURSE ASSETS TO  
STATE INSURANCE GUARANTEE  
ASSOCIATIONS OR FUNDS [INS. CODE  
§ 1035.5]; MEMORANDUM OF POINTS  
& AUTHORITIES IN SUPPORT  
THEREOF**

Date: June 9, 2014  
Time: 1:30 p.m.  
Dept.: CCW-307  
Judge: Honorable William Highberger

I.

**INTRODUCTION**

Pursuant to California Insurance Code section 1035.5, the Insurance Commissioner of the State of California (“Liquidator”), in his capacity as the Liquidator of Fremont Indemnity Company (“Fremont”), seeks the Court’s approval of his proposal to disburse a portion of the Fremont liquidation estate’s assets to the California Insurance Guaranty Association (“CIGA”) and to insurance guaranty associations that perform similar functions in the other states in which Fremont conducted its workers’ compensation business (collectively, the “IGAs”). The Liquidator proposes to disburse approximately \$25,426,592 to the IGAs in accordance with their estimated reported losses from January 1, 2013 through December 31, 2013, as specified in the distribution schedule attached to the application as Exhibit A.

II.

**VERIFIED APPLICATION**

Applicant, the Insurance Commissioner of the State of California, in his capacity as Liquidator of Fremont Indemnity Company states as follows:

1. On June 4, 2003, the Los Angeles County Superior Court ordered and appointed the Commissioner to serve as Conservator of Fremont.

2. On July 2, 2003, the same court found that Fremont was insolvent and, on that basis, terminated the Commissioner’s status as Conservator and appointed the Commissioner to serve as the Liquidator of Fremont. The entry of the Liquidation Order triggered the duty of the IGAs to pay all covered policyholder claims in accordance with the IGAs’ respective statutes.

3. California Insurance Code section 1035.5 provides in relevant portion that:

“Notwithstanding the provisions of Article 14 (commencing with Section 1010), with regard only to those insurers subject to this article:

“(a) Within 120 days of the issuance of an order directing the winding up and liquidation of the business of an insolvent insurer under Section 1016, the commissioner shall make application to the court for approval of a proposal to

1 disburse the insurer's assets, from time to time as such assets become available, to  
2 the California Insurance Guarantee Association, or the California Life and Health  
3 Insurance Guarantee Association, and to any entity or person performing a similar  
4 function in another state.

5 “(b) The proposal shall at least include the following provisions for:

6 “(1) Reserving amounts for the payment of expenses of administration and  
7 the payment of claims of secured creditors (to the extent of the value of the  
8 security held) and claims falling within the priorities established in paragraphs (1)  
9 to (4), inclusive, of subdivision (a) of Section 1033.

10 “(2) Disbursement of the assets marshaled to date and subsequent  
11 disbursements of assets as they become available.

12 “(3) Equitable allocation of disbursements to each of the associations  
13 entitled thereto.

14 “(4) The securing by the commissioner from each of the associations  
15 entitled to disbursements pursuant to this section of an agreement to return to the  
16 commissioner such assets previously disbursed as may be required to pay claims  
17 of secured creditors and claims falling within the priorities established in  
18 paragraphs (1) to (5), inclusive, of subdivision (a) of Section 1033 in accordance  
19 with the priorities. No bond shall be required of any association.

20 “(5) A full report to be made by the association to the commissioner  
21 accounting for all assets so disbursed to the association, all disbursements made  
22 therefrom, any interest earned by the association on the assets, and any other  
23 matter as the court may direct.

24 “(c) The commissioner's proposal shall provide for disbursements to the  
25 associations in amounts estimated at least equal to the claim payments made by  
26 the associations for which such associations could assert a claim against the  
27 commissioner, and shall further provide that if the assets available for  
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1 disbursement from time to time do not equal or exceed the amount of the claim  
2 payments made by the associations, then disbursements shall be in the amount of  
3 available assets. The reserves of the insolvent insurer on the date of the order of  
4 liquidation shall be used for purposes of determining the pro rata allocation of  
5 funds among eligible associations.

6 “(d) The commissioner shall offset the amount disbursed to any entity or  
7 person performing a function in any other state similar to that function performed  
8 by the California Insurance Guarantee Association, or the California Life and  
9 Health Insurance Guarantee Association, by the amount of any statutory deposit,  
10 premiums, or any other asset of the insolvent insurer held in that state.

11 “(e) Notice of such application shall be given to the associations in and to  
12 the commissioners of insurance of each of the states. Any such notice shall be  
13 deemed to have been given when deposited in the United States certified mails,  
14 first-class postage prepaid, at least 30 days prior to submission of such application  
15 to the court. Action on the application may be taken by the court provided the  
16 above required notice has been given and provided further that the commissioner's  
17 proposal complies with paragraphs (1) and (4) of subdivision (b).”

#### 18 **PLAN APPROVAL AND PRIOR DISTRIBUTIONS**

19 4. On December 3, 2004, the Court approved the plan proposed by the Liquidator  
20 for the early distribution of Fremont's assets to the IGAs as required under Insurance Code  
21 section 1035.5 (the “Plan”). Pursuant to the Plan, each IGA will receive an early access  
22 distribution equal to a percentage of an amount based on the ratio of the IGA's paid losses  
23 (which includes the amount of paid “allocated loss adjustment expense,” or ALAE, on specific  
24 claims) to the total of all IGAs' paid losses (including ALAE). Statutory deposits will be netted  
25 from each IGA's share to ensure that the allocation of the early access distribution remains  
26 equitably proportionate to each IGA's respective share of Fremont's aggregate claim payment  
27 liability. Under the Plan, the Liquidator also agreed to maintain a \$60 million reserve, subject to  
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1 periodic adjustment, to cover items listed in Insurance Code section 1035.5, subdivision (b)(1)  
2 (the "Reserve").

3 5. The Court further approved the first distribution by the Liquidator from Fremont's  
4 assets to the IGAs for claim payment activity reported by the IGAs from July 2, 2003, through  
5 June 30, 2004. On December 14, 2004, the Liquidator disbursed Fremont's assets in the  
6 aggregate amount of \$49,224,224 to the IGAs based on claim losses reported to the Liquidator,  
7 after offsetting statutory deposits and other assets that were turned over to the IGAs upon  
8 Fremont's insolvency.

9 6. On July 7, 2005, the Court approved a second distribution of Fremont's assets to  
10 the IGAs for claim payment activity reported by the IGAs from July 1, 2004, through December  
11 31, 2004. Pursuant to the Court's approval, the Liquidator disbursed Fremont's assets in the  
12 aggregate amount of \$36,934,280 to the IGAs based on claim losses reported to the Liquidator,  
13 after offsetting statutory deposits and other assets that were turned over to the IGAs upon  
14 Fremont's insolvency.

15 7. On June 11, 2006, the Court approved a third distribution of Fremont's assets to  
16 the IGAs for claim payment activity reported by the IGAs from January 1, 2005, through  
17 December 31, 2005. Pursuant to the Court's approval, the Liquidator disbursed Fremont's assets  
18 in the aggregate amount of \$168,063,039 to the IGAs based on claim losses reported to the  
19 Liquidator, after offsetting statutory deposits and other assets that were turned over to the IGAs  
20 upon Fremont's insolvency.

21 8. On August 3, 2007, the Court approved a fourth distribution of Fremont's assets to  
22 the IGAs for claim payment activity reported by the IGAs from January 1, 2006, through  
23 December 31, 2006. Pursuant to the Court's approval, the Liquidator disbursed Fremont's assets  
24 in the aggregate amount of \$144,007,213 to the IGAs based on claim losses reported to the  
25 Liquidator, after offsetting statutory deposits and other assets that were turned over to the IGAs  
26 upon Fremont's insolvency.

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1           9.       On June 11, 2008, the Court approved a fifth distribution of Fremont's assets to the  
2 IGAs for claim payment activity reported by the IGAs from January 1, 2007, through December  
3 31, 2007. Pursuant to the Court's approval, the Liquidator disbursed Fremont's assets in the  
4 aggregate amount of \$49,675,212 to the IGAs based on claim losses reported to the Liquidator,  
5 after offsetting statutory deposits and other assets that were turned over to the IGAs upon  
6 Fremont's insolvency.

7           10.       On October 5, 2009, the Court approved a sixth distribution of Fremont's assets to  
8 the IGAs for claim payment activity reported by the IGAs from January 1, 2008, through  
9 December 31, 2008. Pursuant to the Court's approval, the Liquidator disbursed Fremont's assets  
10 in the aggregate amount of \$50,000,000 to the IGAs based on claim losses reported to the  
11 Liquidator, after offsetting statutory deposits and other assets that were turned over to the IGAs  
12 upon Fremont's insolvency.

13           11.       On October 17, 2011, the Court approved a seventh distribution of Fremont's  
14 assets to the IGAs for claim payment activity reported by the IGAs from January 1, 2009, through  
15 December 31, 2010. Pursuant to the Court's approval, the Liquidator disbursed Fremont's assets  
16 in the aggregate amount of \$39,905,597.00 to the IGAs based on claim losses reported to the  
17 Liquidator, after offsetting statutory deposits and other assets that were turned over to the IGAs  
18 upon Fremont's insolvency.

19           12.       On August 7, 2012, the Court approved the eighth early access of Fremont's assets  
20 to the IGA's for claim payment activity reported by the IGAs from January 1, 2011, through  
21 December 31, 2011. Pursuant to the Court's approval, the Liquidator distributed assets in the  
22 aggregate amount of \$39,617,203 to the IGAs based on claim losses reported to the Liquidator,  
23 after offsetting statutory deposits and other assets that were turned over to the IGAs upon  
24 Fremont's insolvency.

25           13.       On August 26, 2013, the Court approved the ninth early access of Fremont's assets  
26 to the IGA's for claim payment activity reported by the IGAs from January 1, 2012, through  
27 December 31, 2012. Pursuant to the Court's approval, the Liquidator distributed assets in the  
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1 aggregate amount of \$25,564,790 to the IGAs based on claim losses reported to the Liquidator,  
2 after offsetting statutory deposits and other assets that were turned over to the IGAs upon  
3 Fremont's insolvency.

#### 4 **ADJUSTMENT TO RESERVE**

5 14. As part of the Court's approval of the early access distribution plan on December  
6 3, 2004, the Liquidator proposed to set aside a reserve of \$60 million, subject to periodic  
7 adjustments to ensure that the reserve is neither too great nor too small for the proper and  
8 equitable administration of the estate and the protection of claimants. The Liquidator further  
9 agreed to advise the Court of future changes in the reserve at the time he files his Notices of  
10 Proposed Early Access Distribution.

11 15. In 2008, the Liquidator advised the Court that a reserve of \$30 million was  
12 sufficient. In 2009, the Liquidator determined that it was necessary to increase the Reserve to  
13 \$60 million, pending the completion and approval of a plan to effect a taxpayer deconsolidation  
14 of the estate from the consolidated taxpayer group of Fremont's former parent company, Fremont  
15 General Corporation. After making the early access distribution in 2013, the Fremont estate had  
16 approximately \$42.2 million in available reserves set aside.

#### 17 **LIMITATIONS ON DISTRIBUTION**

18 16. The estate also implemented limitations on future early access distributions to  
19 avoid over-distribution to certain IGAs and in consideration of the funds that ultimately will be  
20 required for an equitable distribution to other non-IGA Class 2 claimants, who were not entitled  
21 to early access distribution but are entitled to equal claim treatment. As of March 31, 2014, the  
22 estate has set aside \$3.34 million in approved claims and \$19.98 million as a reserve to address  
23 the non-IGA Class 2 claims that have yet to be determined.

24 17. Prior to 2009, the IGAs were reimbursed for all paid claims and related expenses at  
25 percentages between 85-100%. However, several years ago the Liquidator settled all major  
26 litigation involving this estate. In addition, the Liquidator has continued to administer and  
27 monitor the adjustment of Uncovered Claims that will eventually share in future distributions *pari*  
28

1 *passu* with the IGAs. Based on the settlements and developments in adjusting and estimating the  
2 amount of the estate's potential liability on Uncovered Claims, the Liquidator determined that the  
3 estimated final distribution to Class 2 participants, including both IGAs and Uncovered Claims,  
4 will be in the range of 40-50%. This analysis caused the Liquidator to change the method used to  
5 make early access distributions to participating IGAs.

6 18. The Liquidator has established a distribution cap based on each IGA's total  
7 incurred losses. The Liquidator will not make a distribution to an IGA that will cause its  
8 aggregate distributions to exceed its total paid losses to date. Due to favorable asset collections  
9 from reinsurance and non-adverse development of claims liabilities, the Liquidator has increased  
10 the distribution cap to 43.25% of the IGAs' total incurred losses.

#### 11 **THE PROPOSED 2014 DISTRIBUTION**

12 19. After the IGAs reported to the Liquidator their claim payment activity for the  
13 period January 1, 2013 through December 31, 2013, and after the Liquidator applied the protocol  
14 described in paragraphs 18 above, the Liquidator determined that \$25.4 million is an appropriate  
15 Early Access Distribution for 2014. The specific amount anticipated to be paid to each  
16 participating IGA is provided in the schedule attached as Exhibit A hereto and incorporated  
17 herein by this reference.

18 20. As of March 31, 2014, the Fremont estate has cash assets of \$80,564,490. After  
19 making the proposed 2014 Early Access Distribution of \$25.4 million, the Fremont estate will  
20 have an available pool of approximately \$55.1 million remaining as a reserve for liabilities  
21 referenced in Insurance Code section 1035.5, subdivision (b)(1).

22 21. Finally, as required by Insurance Code section 1035.5, subdivisions (b)(4) and  
23 (b)(5), each IGA receiving a distribution has signed an Agreement for Early Access Distribution  
24 of Funds, which obligates the IGA to return to the Fremont estate any portion of an early access  
25 distribution that exceeds the IGA's ratable share of the ultimate Class 2 distributions from the  
26 liquidation estate. The agreements govern this distribution and each subsequent early access  
27 distribution of assets from the Fremont estate.

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WHEREFORE, the Liquidator prays that this Application be heard and granted, and that

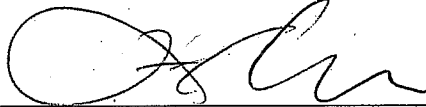
1. Authorizing the Liquidator to disburse approximately \$25.4 million from the assets of Fremont Indemnity Company to the IGAs, subject to final adjustments of the disbursement amount; and

2. Authorizing the Liquidator to take any and all action necessary to accomplish the purposes of the Order prayed for herein.

Dated: May 9, 2014

Respectfully submitted,

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of the State of California, in his capacity as  
Liquidator of Fremont Indemnity Company*



1 MEMORANDUM OF POINTS AND AUTHORITIES

2 California Insurance Code section 1035.5 states the procedural requirements regarding the  
3 disbursement of an insolvent insurer's assets. The following sets forth the responsibility of the  
4 Insurance Commissioner of the State of California, in his capacity as the Liquidator (the  
5 "Liquidator") of Fremont Indemnity Company, to apply for the disbursements to the California  
6 Insurance Guarantee Association and the Insurance Guarantee Associations in other states  
7 (collectively "IGAs"):

8 Within 120 days of the issuance of an order directing the winding up and  
9 liquidation of the business of an insolvent insurer under Section 1016, the  
10 commissioner shall make application to the court for approval of a proposal to  
11 disburse the insurer's assets, from time to time as such assets become available, to  
12 the California Insurance Guarantee Association, or the California Life and Health  
13 Insurance Guarantee Association, and to any entity or person performing a similar  
14 function in another state.

15 (Ins. Code, § 1035.5, subd. (a).)

16 California and other states have similar requirements regarding the handling of assets of  
17 insolvent insurers that require the equitable distribution of an insolvent insurer's assets among all  
18 IGAs. (Ins. Code, § 1033, subd. (a); *Commercial Nat'l Bank v. Superior Court (Garamendi)*  
19 (1993) 14 Cal.App.4th 393, 398 [finding that claimants within same class are entitled to share pro  
20 rata in distribution to class].)

21 As required under Insurance Code section 1035.5(b)(1), the Liquidator has established a  
22 reasonable plan to reserve assets to pay secured claims and the higher or ratable priority  
23 disbursement required under Insurance Code section 1033(a). Therefore, the Liquidator should  
24 be allowed to make his proposed early access distribution of approximately \$25.4 million to the  
25 IGAs.

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Based on the foregoing, the Liquidator respectfully requests that the Court grant the application and approve the proposal to disburse assets to state Insurance Guarantee Associations.

Dated: May 9, 2014

Respectfully submitted,

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Liquidator of Fremont Indemnity Company*

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**EXHIBIT "A"**

Exhibit A

**Fremont Indemnity Company**

Proposed 10<sup>th</sup> Early Access Distribution to Insurance Guaranty Associations

June 2014

<u>Insurance Guaranty Associations</u>	<u>Proposed Distribution</u>
Alabama Insurance Guaranty Association	\$48,858
Alaska Insurance Guaranty Association	\$2,574,179
Industrial Commission of Arizona Special Fund	\$6,648,065
California Insurance Guarantee Association	\$10,593,790
Connecticut Insurance Guaranty Association	\$93,430
District of Columbia Insurance Guaranty Association	\$51,286
Georgia Insurance Insolvency Pool	\$237,688
Kentucky Insurance Guaranty Association	\$27,293
Minnesota Insurance Guaranty Association	\$35,827
Montana Insurance Guaranty Association	\$482,663
North Carolina Insurance Guaranty Association	\$127,600
New Jersey Workers' Compensation Security Fund	\$1,279,055
New Mexico Property & Casualty Insurance Guaranty Association	\$503,957
Nevada Insurance Guaranty Association	\$12,645
Oklahoma Property & Casualty Insurance Guaranty Association	\$186,547
Pennsylvania Workers' Compensation Security Fund	\$1,482,435
Texas Property & Casualty Insurance Guaranty Association	\$409,931
Utah Property & Casualty Insurance Guaranty Association	\$580,484
Virginia Property & Casualty Insurance Guaranty Association	\$4,778
Vermont Property & Casualty Insurance Guaranty Association	\$46,081
	<hr/>
	\$25,426,592

**DECLARATION OF SERVICE BY CERTIFIED MAIL AND FIRST CLASS MAIL**  
(Separate Mailings)

Case Name: **Insurance Commissioner v. Fremont Indemnity Company**

No.: **BS083582**

I declare:

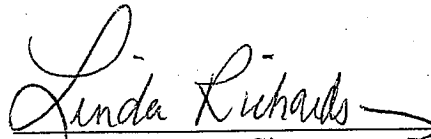
I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On May 9, 2014, I served the attached **TENTH VERIFIED APPLICATION FOR ORDER APPROVING LIQUIDATOR'S PROPOSAL TO DISBURSE ASSETS TO STATE INSURANCE GUARANTEE ASSOCIATIONS OR FUNDS [INS. CODE § 1035.5]; MEMORANDUM OF POINTS & AUTHORITIES IN SUPPORT THEREOF** by placing a true copy thereof enclosed in a sealed envelope as certified mail with return receipt requested, and another true copy of the **TENTH VERIFIED APPLICATION FOR ORDER APPROVING LIQUIDATOR'S PROPOSAL TO DISBURSE ASSETS TO STATE INSURANCE GUARANTEE ASSOCIATIONS OR FUNDS [INS. CODE § 1035.5]; MEMORANDUM OF POINTS & AUTHORITIES IN SUPPORT THEREOF** was enclosed in a second sealed envelope as first class mail in the internal mail collection system at the Office of the Attorney General at 300 South Spring Street, Suite 1702, Los Angeles, CA 90013, addressed as follows:

**SEE ATTACHED SERVICE LIST**

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on May 9, 2014, at Los Angeles, California.

\_\_\_\_\_  
Linda Richardson  
Declarant

  
\_\_\_\_\_  
Signature

**SERVICE LIST**

Case Name: Insurance Commissioner v. Fremont Indemnity Company

L. A. S. C. Case No.: BS083582

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<p>Sandra Robinson, President Florida Insurance Guaranty Association P.O. Box 14249 Tallahassee, FL 32317</p>	<p>Sandra J. Robinson, President Florida Workers Compensation Insurance Guaranty Association P.O. Box 15159 Tallahassee, FL 32317</p>
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